

Delhi HC to examine constitutionality of Sec.148 'deeming fiction' applicable to non-searched persons

Feb 20, 2024

Delhi HC issues notice in writ petition challenging the constitutional validity of deeming fiction under Explanation 2 to Section 148 with respect to persons other than the searched person i.e. clauses (iii) and (iv); HC notes the Assessee's submission that the deeming fiction under the said Explanation treats any material gathered in the course of a search pertaining to an assessee as deemed to be an information suggestive of income chargeable to tax having escaped assessment; Further notes Assessee's submission, "*aforesaid provision clearly deprives the person other than the searched person of even the salutary safeguards constructed under Sections 148A(b) and 148A(d) of the Act. It is further submitted that although clauses (iii) and (iv) of Explanation 2 use the expression "pertains or pertain to, any information contained therein, relate to, the assessee", they do not require that information being suggestive of income liable to tax having escaped assessment"*"; HC remarks that the matter requires consideration and grants time for completion of pleadings; Also clarifies that the Revenue can proceed further as per the impugned notices but any adverse order shall not be given effect to until the next date i.e. Apr 5, 2024.

The matter is before the Division Bench of Delhi High Court comprising Justice Yashwant Varma and Justice Purushaindra Kumar Kaurav.

Advocates Salil Kapoor, Sumit Lalchandani and Ananya Kapoor are appearing for the Assessee while the Revenue is being represented by Junior Standing Counsel Sanjeev Menon for Senior Standing Counsel Zoheb Hossain.