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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 22.11.2023*

+ **W.P.(C) 5737/2023 & CM No.22472/2023**

DEEPAK MODI

..... Petitioner

Through: Mr Ruchesh Sinha, Adv.

versus

ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE

46 (1) & ANR.

..... Respondents

Through: Ms Priya Sarkar, Standing Counsel
for Mr Shlok Chandra, Sr Standing
Counsel.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE GIRISH KATHPALIA

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J.: (ORAL)

1. We had heard the matter at some length on 03.05.2023 and briefly etched out the broad contours of the case. For convenience, the relevant parts of the order dated 03.05.2023 are set forth hereafter:

"2. This writ petition concerns Assessment Year (AY) 2019-2020.

3. The allegation levelled against the petitioner is, that he has acquired accommodation entries, and thus recorded in his books of accounts, bogus transactions with an entity going by the name New Goodwill Traders.

4. According to the respondents/revenue, as a result of the said accommodation entries, income chargeable to tax amounting to Rs.65,95,123/- has escaped assessment.

5. Mr Ruchesh Sinha, counsel who appears for the petitioner, has drawn our attention to the reply, and the documents submitted with the said reply, to demonstrate that every relevant document, which included purchase bills issued by New Goodwill Traders, E-way Bill, Lorry receipts and the



sales invoices were placed before the Assessing Officer (AO).

5.1 It is Mr Sinha's contention, that the copies of GSTR 2A/2B were also furnished, along with the bank statement of the subject bank account, wherein payments have been received via RTGS.

5.2 Mr Sinha has drawn our attention to the CBDT guidelines and instruction dated 22.08.2022 respectively. In support of his plea, that the procedure prescribed therein had not been followed by the AO before triggering reassessment proceedings, inter alia, our attention is drawn to paragraph 3 of the instruction dated 22.08.2022. Based on the provisions of paragraph 3, Mr Sinha says that the CBDT is cognizant of the fact, that the information available on the portal would have to be verified.

6. A perusal of the impugned order dated 30.03.2023 passed under Section 148A(d) of the Act shows, that the reassessment proceedings qua the petitioner were, perhaps, triggered on account of a search and seizure action being taken out against Star Traders Group.

7. It is the respondents/revenue's stand, that both New Goodwill Traders and Star Traders are engaged in providing accommodation entries. The petitioner seems to have come within the scope of enquiry, on account of the search actions taken out against the aforementioned entities.

8. We may note, that one of the grievances articulated by Mr Sinha is, that even though oral hearing was sought by the petitioner, the same was not granted.

8.1 It is Mr Sinha's contention, that if a hearing was granted, perhaps some of the doubts which the AO raised would have got clarified.

9. A perusal of both the guidelines as well as the instruction issued by the CBDT indicates, that the AO is required to accord personal hearing to the notice.

10. Mr Shlok Chandra, counsel who appears on behalf of respondents/revenue says, that he will return with instructions on this aspect of the matter.

11. Accordingly, issue notice.

11.1 Mr Chandra accepts notice on behalf of the respondents/revenue.

12. In case instructions are received to resist the writ petition, counter-affidavit will be filed at least three days before the next date of hearing.

13. List the matter on 26.05.2023.

14. In the meanwhile, there shall be a stay on the continuation of the reassessment proceedings.

15. Parties will act based on the digitally signed copy of the order."

2. As would be evident from the above extract, the following two grievances were articulated by Mr Ruchesh Sinha, learned counsel, who appears on behalf of the petitioner/assessee:



(i) First, there was no inquiry conducted before directing the reassessment proceedings;

(ii) Second, had the Assessing Officer (AO) granted an oral hearing, his queries could have been addressed.

3. Pursuant to the said order, an affidavit dated 25.05.2023 has been filed by the respondents/revenue. The affidavit clearly states that no oral hearing was granted to the petitioner before passing the impugned order dated 30.03.2023 under Section 148A(d) of the Income Tax Act, 1961 [in short, “Act”] concerning Assessment Year (AY) 2019-20.

4. Having regard to the averments made in the aforementioned affidavit filed by the respondents/revenue, according to us, the best way forward would be to set aside the impugned order dated 30.03.2023 passed under Section 148A(d) and the consequent notice of even date i.e., 30.03.2023 issued under Section 148 of the Act, *albeit* with liberty to the AO to pass a fresh order after hearing the petitioner/assessee.

5. Accordingly, the impugned order dated 30.03.2023 and the consequent notice of even date i.e., 30.03.2023 issued under Section 148 of the Act are set aside.

5.1 Liberty is, however, given to the AO to pass a fresh order.

5.2 Before passing an order, the AO will grant an oral hearing to the petitioner and/or his authorised representative.

5.3 Needless to add, the AO will pass a speaking order; a copy of which will be furnished to the petitioner/assessee.

6. The writ petition is disposed of, in the aforesaid terms.

7. Interim order dated 03.05.2023 shall stand vacated. CM Appl. 22472/2023 is closed.



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8. Parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

NOVEMBER 22, 2023/pmc