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

% *Decision delivered on: 08.12.2022*

\+ **W.P.(C) 12641/2022 & CM Nos.38312-13/2022**

EMPIRE TRADING COMPANY .....Petitioner
Through: Mr Ramesh Singh, Sr. Adv. with Ms Shreya Jain and Mr Gaurav Tanwar, Advs.

versus

INCOME TAX OFFICER WARD 29(1) .....Respondent
Through: Mr Shailendra Singh, Adv.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MS. JUSTICE MINI PUSHKARNA
[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

CM No.38313/2022

1. Allowed, subject to just exceptions.

W.P.(C) 12641/2022 & CM No.38312/2022 ***[Application filed on behalf of the petitioner seeking interim relief]***

2. We find from the record, that a formal notice has not been issued in the writ petition.

3. Issue notice.

3.1 Mr Shailendra Singh accepts notice on behalf of the respondent.

4. In view of the direction that we propose to pass, Mr Shailendra Singh says that a counter-affidavit need not be filed in the matter.

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5. The substantive prayer made in the writ petition reads as follows :

> *"(a) Allow the present Writ Petition and issue any writ, order or direction in the nature of certiorari and/or mandamus and/or any other appropriate writ, order or direction in the nature thereof, quashing/ setting aside the Impugned Order u/s 148A(d) of the Act dated 30.07.2022 and Impugned Notice u/s 148A(b) of the Act dated 26.05.2022 and Impugned Notice u/s 148 of the Act dated 30.07.2022 issued to the Petitioner for AY 2014-15, by the Respondent and all proceedings emanating therefrom."*

6. The record shows, that the central allegation against the petitioner is, that he is a beneficiary of the accommodation entries provided by "Atul Tyagi Group of Gurugram."

6.1 The respondent/revenue has alleged, that the petitioner has received an accommodation entry amounting to Rs.1,51,50,061/-.

7. The petitioner, in response to the notice issued under Section 148A(b) of the Income Tax Act, 1961 [in short "Act"] had *inter alia*, indicated that the petitioner firm had been dissolved way back on 21.01.2008, and that this information had been furnished to the respondent/revenue.

8. Besides this, the petitioner has taken a categorical stand, that it has not entered into any transaction or business activity with Atul Tyagi Group of Gurugram.

9. Mr Ramesh Singh, learned senior counsel, who appears on behalf of the petitioner, submits that no material whatsoever was furnished to the petitioner, to demonstrate that the petitioner had, in fact, entered into a transaction, in the relevant period i.e., Financial Year [FY] 2013-2014 (Assessment Year [AY] 2014-2015) with Atul Tyagi Group of Gurugram.

9.1 In fact, the petitioner takes a position, that in the given period, it has not entered into any transaction with any person or entity, given the fact that it stood dissolved, as noticed above, on 21.01.2008.

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10. We may point out, that there is a flaw in the manner in which the petition has been framed.

10.1 The petition has been filed in the name of the dissolved partnership firm, whereas it should have been filed by the individuals, who are partners of the dissolved firm.

10.2 The affidavit appended to the writ petition, however, has been filed by Mr Abhishek Sahai and Mr Ajit Sahai, who claim to be the ex-partners of the petitioner arrayed before us i.e., Empire Trading Company.

11. Given the fact, that the affiants are the former partners of the petitioner, this defect, in our view, can be ignored.

12. In view of what has been observed by us hereinabove, Mr Shailendra Singh cannot but accept, that the material in possession of the concerned assessing officer should have been furnished to the noticee. [In this case, the partners].

13. Thus, having regard to the foregoing, we are inclined to set aside the order dated 30.07.2022 passed under Section 148A(d) of the Act, and the notice of even date i.e., 30.07.2022 issued under Section 148 of the Act.

13.1 It is ordered accordingly.

14. The partners of the petitioner i.e., Mr Abhishek Sahai and Mr Ajit Sahai and/or their authorized representatives will appear before the concerned assessing officer on 09.01.2023, at 11:00 AM.

14.1 The concerned assessing officer will furnish the material in his possession to the aforementioned partners, and afford them an opportunity to have their say placed before him.

15. The assessing officer, thereafter, will pass a speaking order, as per law.

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15.1 In case the order passed by the assessing officer is adverse to the interests of the aforementioned individuals, who claim to be the ex-partners of the Empire Trading Company i.e., the petitioner, they will have liberty to take recourse to an appropriate remedy, in accordance with law.

16. Needless to add, since we have not examined the case on merits, the aforementioned individuals will have the liberty to put forth all contentions that they may require, before the assessing officer.

17. The writ petition is disposed of in the aforesaid terms.

18. Consequently, pending applications shall stand closed.

RAJIV SHAKDHER, J

MINI PUSHKARNA, J

DECEMBER 8, 2022
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Click here to check corrigendum, if any

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