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

% *Decision delivered on: 21.12.2022*

\+ **W.P.(C) 17457/2022&CM APPL. 55646-47/2022**

LEMON TREE HOTELS LTD ..... Petitioner

Through: Mr Rohit Jain, Adv. with Mr Aniket D. Agrawal and Mr Samarth Chaudhari, Advs.

versus

ASSISTANT COMMISSIONER OF INCOME TAX & ORS. ..... Respondents

Through: Mr Abhishek Maratha, Sr. Standing Counsel.

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

RAJIV SHAKDHER, J. (ORAL):

CM No.55647/2022

1. Allowed, subject to the petitioner filing legible copies of annexures, at least three days before the next date of hearing.

W.P.(C) 17457/2022&CM APPL. 55646/2022*[Application filed on behalf of the petitioner seeking interim relief]*

2. Issue notice.

2.1 Mr Abhishek Maratha accepts notice on behalf of the respondents/revenue.

3. In view of the order that we intend to pass, Mr Maratha says that he does not wish to file a counter-affidavit at this juncture.

4. Thus, with the consent of learned counsel for the parties, the writ

petition is taken up for personal hearing and final disposal, at this stage itself.

5. This writ petition is directed against the notice dated 30.06.2021 issued under Section 148 of the Income Tax Act, 1961 [in short "Act"].

5. In addition thereto, challenge is also laid to the letter/notice dated 02.06.2022, the order dated 30.07.2022 passed under Section 148A(d) of the Act, and lastly the consequent notice of even date i.e., 30.07.2022 issued under Section 148 of the Act.

6. To be noted, the instant writ petition concerns Assessment Year (AY) 2015-2016.

7. A perusal of the record, in particular the reply dated 24.06.2022, filed pursuant to the show-cause notice dated 02.06.2022 discloses that the petitioner had asked for a personal hearing, in the event that the assessing officer chose to proceed further in the matter.

8. Clearly, in this case, a personal hearing was not granted before passing the order under Section 148 A (d); the notice issued under Section 148 of the Act was only consequential.

9. In these circumstances, the order dated 30.07.2022 passed under Section 148 A (d) and the notice of even date i.e., 30.07.2022 issued under Section 148 of the Act are set aside.

10. The matter is remitted to the concerned assessing officer for carrying out a *de novo* exercise.

10.1 The assessing officer will also grant a personal hearing to the authorized representative of the petitioner.

10.2 In this context, the assessing officer will issue a notice to the petitioner, which will set out the date and time of the hearing.

11. Needless to add, all defences will be available to the petitioner/assessee, as observed in ***Union of India v. Ashish Aggarwal***2022 SCC OnLine SC 543.

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

13. Pending application shall stand closed.

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

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

DECEMBER 21, 2022/SA

Click here to check corrigendum, if any