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

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Date of Decision: 14.02.2023

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W.P.(C) 839/2023 & CM APPL. 3227/2023

SRU STEELS LIMITED

..... Petitioner

Through: Ms Rano Jain with Mr Venketesh
Mohan Chaurasia, Advs.

versus

INCOME TAX OFFICER WARD 24 1 DELHI Respondent

Through: Mr Sunil Agarwal, Sr. Standing
Counsel with Mr Utkarsh Tiwari,
Advocate.

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):

1. In view of the directions that we propose to pass, Mr Sunil Agarwal, learned senior standing counsel, who appears on behalf of the respondent/revenue, says that no counter-affidavit is required to be filed.
2. Therefore, with the consent of the counsel for the parties, the writ petition is taken up final hearing and disposal, at this stage itself.
3. This writ petition came up for hearing, in the first instance, on 23.01.2023. At that juncture, Mr Agarwal had raised a preliminary objection, which is, that the order *qua* which grievance was articulated in the writ petition was passed as far back as on 31.03.2022.
4. This order was passed under Section 148A(d) of the Income Tax Act, 1961 [in short, "Act"].

5. Having regard to the objection taken, we had asked Mr Agarwal to return with instructions, as to whether or not in the intervening period, the Assessing Officer [AO] had passed an assessment order.

5.1 Mr Agarwal has returned with instructions, to the effect that the AO has not passed an assessment order, as yet.

5.2 The statement of Mr Agarwal is taken on record.

6. The record shows, that the principal allegation against the petitioner is, that it has indulged in bogus sale and purchase transactions, to claim fraudulent Input Tax Credit (ITC).

6.1 The entities, which have been referred to by the respondent/revenue in the Section 148A(b) notice are the following:

- (i) M/s Mica Industries Ltd.;
- (ii) M/s Satellite Cable Pvt. Ltd.;
- (iii) M/s Sri Ram Industries;
- (iv) M/s Jatalia Global Venture Ltd.; and
- (v) M/s Manoj Cables Ltd.

7. It is alleged, that the petitioner has entered into a transaction worth Rs.7,19,86,100/-. Apart from anything else, there is also an allegation made against the petitioner, on the very same lines, concerning the following entities: Jatalia Global Ventures Limited, Manoj Cables Limited and RCI Industries and Technologies. As would be evident, the names of two out of the three entities also appear in paragraph 6.1 above.

8. The allegation is, that insofar as RCI Industries and Technologies is concerned, the petitioner has entered into a financial transaction worth Rs.1,29,00,000/- Thus, the cumulative worth of bogus transactions, which the petitioner seems to have allegedly entered into with the aforementioned

entities is Rs.8,48,86,110/-.

9. According to the respondent/revenue, the aforementioned transactions fall within Financial Year 2017-18 [(AY) Assessment Year 2018-19].

9.1 The aforementioned information is contained in the “Annexure” appended to the notice dated 23.03.2022 issued to the petitioner under Section 148A(b) of the Act.

10. We have, on record, the reply dated 26.03.2022 filed by the petitioner to the aforementioned notice. Briefly, the petitioner has denied having entered into transactions in the period under consideration with the entities referred to hereinabove.

11. We have asked Ms Rano Jain, who appears on behalf of the petitioner, as to whether any information/material was furnished to the petitioner, which linked the petitioner to the aforementioned entities. Ms Jain emphatically submits, that no information/material was supplied.

11.1 As a matter of fact, Ms Jain also submits, that the information with regard to the specified authority which granted the approval for triggering the reassessment proceedings was also not provided to the petitioner.

12. Besides this, Ms Jain has also referred to pages 30 and 59 of the case file, where the details of the parties with whom the petitioner has entered into transactions is set forth. Both these documents are typed documents.

13. The document appended on page 30 of the case file provides the details of purchases made from the entities, while the document which is annexed on page 59 of the case file provides the details of the sales, made during the period spanning between 01.04.2017 and 31.03.2018.

14. A perusal of the order dated 31.03.2022 passed under Section 148A(d) of the Act would show, that while the Assessing Officer (AO) has

noticed the fact that the petitioner has filed the reply, he has not dealt with the objections raised by the petitioner. The AO appears to have been persuaded to trigger the reassessment proceedings because of the information made available to him, which had its source in the insight portal.

15. According to us, this was not a satisfactory way of approaching the matter. The Assessing Officer should have applied his mind to the reply filed by the petitioner and formed an opinion based on the material placed, as to whether income chargeable to tax had indeed escaped assessment. Therefore, for the moment, according to us, the best way forward would be to set aside the impugned order and the notice, both of which are dated 31.03.2022, with a direction to the AO to carry out a *de novo* exercise.

15.1 It is ordered accordingly.

16. However, before commencing this exercise, the AO will furnish necessary information/material, which links, according to him, the petitioner to the entities referred to in the notice issued under Section 148A(b) of the Act.

16.1 If such information/material is furnished to the petitioner, the petitioner will be granted liberty to file a supplementary reply.

16.2 For this purpose, two weeks will be granted to the petitioner.

16.3 The AO will, thereafter, deal with the objections of the petitioner and pass a speaking order; a copy of which will be furnished to the petitioner.

17. We are informed by Mr Agarwal, that in the normal course, the time period for passing the order will expire on 31.03.2023.

17.1 Given the fact that the AO will carry out a *de novo* exercise, he is granted time to pass a fresh order up until 31.05.2023.

18. Needless to state, the observations made hereinabove will not impact the merits of the matter.
19. The writ petition is disposed of in the aforesaid terms.
20. Consequently, the pending application shall stand closed.
21. Parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

FEBRUARY 14, 2023

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Click here to check corrigendum, if any