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

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Date of Decision: 27.01.2023

+ **W.P.(C) 1013/2023 & CM Appl.3916/2023**

RAHUL AGGARWAL

..... Petitioner

Through: Mr Sumit Lalchandani, Adv. for
Mr Salil Kapoor.

versus

INCOME TAX OFFICER WARD 70-1 & ANR. Respondents

Through: Mr Ruchir Bhatia, 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 Appl.3917/2023

1. Allowed, subject to just exceptions.

W.P.(C) 1013/2023 & CM Appl.3916/2023*[Application filed on behalf of
the petitioner seeking interim relief]*

2. Issue notice.

2.1 Mr Ruchir Bhatia accepts notice on behalf of the respondents/revenue.

3. In view of the directions that we intend to pass, Mr Bhatia says that no counter-affidavit is required to be filed in this case. Therefore, with the consent of the counsel for the parties, the writ petition is taken up for hearing and final disposal at this stage itself.

4. This writ petition is directed against the notice dated 23.05.2022 issued under Section 148A(b) of the Income Tax Act, 1961 [in short "Act"].

In addition thereto, challenge has also been laid to the order dated 29.07.2022 passed under Section 148A(d), and the consequent notice of even date i.e., 29.07.2022 issued under Section 148 of the Act.

5. To be noted, the impugned notices and the order concern Assessment Year (AY) 2016-2017.

6. We may note, that the petitioner has also laid challenge to the instructions dated 11.05.2022 issued by the Central Board of Direct Taxes (CBDT).

7. Counsel for the petitioner says, that at this juncture, he does not wish to press this particular prayer.

8. Concededly, even according to Mr Bhatia, there is a dissonance between the input received from the insight portal, which was conveyed through case related information/detail, and what is noted in the Section 148A(b) notice.

9. The misalignment is with regard to the amount which has escaped assessment.

10. In the Section 148A(b) notice, the amount mentioned is Rs. 60,41,400/- whereas in the case related information details, the amount mentioned is Rs. 42,18,000/-. This is despite the petitioner informing the Assessing Officer (AO) *via* communication dated 06.06.2022, that there is a discrepancy between what is stated in the Section 148A(b) notice and the input received from the insight portal.

10.1 This aspect of the matter is mentioned in paragraph 2 of the reply dated 06.06.2022.

11. The AO, however, proceeded on the same course and passed an order under Section 148A(d) of the Act, in which the amount of the escaped

income has been scaled down to Rs 42,18,000/-.

12. According to us, there has been no application of mind, and therefore, the impugned order and notices are set aside.

13. The AO will have liberty to take the next steps in the matter, *albeit*, as per law.

14. Needless to state, if any such steps are taken, due opportunity of hearing will be accorded to the petitioner and/or his authorized representative.

15. Clearly, in this situation, if the escaped amount is Rs 42,18,000/-, then the respondents/revenue would have to cross the hurdle of Section 149(1)(b). However, if the escaped income, according to the respondents/revenue, is Rs 60,41,400/-, the AO will have to furnish the material, on the basis of which he pegged the said amount as the escaped income chargeable to tax.

16. Therefore, we set aside the impugned order passed under Section 148A(d), and the consequent notice under Section 148, with liberty to the AO to commence proceedings afresh. However, before the AO proceeds further, he/she will furnish the relevant material/information available.

17. The writ petition and pending application are disposed of in the aforesaid terms.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

JANUARY 27, 2023/r