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

% *Date of decision: 14.02.2023*

+ **W.P.(C) 1840/2023 & CM APPL. 7036-7037/2023**

RISHAB GARG

.....Petitioner

Through: Mr S. Krishnan & Mr Amandeep
Mehta, Advocates.

versus

INCOME TAX OFFICER & 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. 7037/2023

1. Allowed, subject to just exceptions.

W.P.(C) 1840/2023 & CM APPL. 7036/2023 [*Application filed on behalf
of the petitioner seeking interim relief*]

2. Issue notice.

2.1 Mr Ruchir Bhatia, learned senior standing counsel, accepts notice on
behalf of the respondents/revenue.

3. In view of the directions that we propose to pass, Mr Bhatia says, that
no counter-affidavit is required to be filed.

4. 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.

5. This writ petition is directed against the order dated 10.04.2022 passed under Section 148A(d) of the Income Tax Act, 1961 [in short ‘the Act’], and the consequent notice dated 11.04.2022 issued under Section 148 of the Act.

5.1 The impugned order and notice concern Assessment Year (AY) 2018-19.

6. Besides laying challenge to the aforementioned notice and order, the petitioner has also sought a direction for grant of copies of the three approvals stated to have been given by respondent no.2 under Section 151 of the Act, and the information and material, based on which reassessment proceedings were triggered.

7. For the purpose of adjudication of the instant writ petition, the following essential facts need to be noticed.

7.1 The allegation against the petitioner is, that it is a beneficiary of “fictitious purchase” amounting to Rs.25,24,728/-. The source of this transaction is an entity, going by the name Balaji Enterprises.

7.2 Interestingly, it is not indicated in the Annexure appended to the notice dated 24.03.2022 issued under Section 148A(b) of the Act, as to what the fictitious purchase relates to. What muddles i.e., complicates the issue further, is the assertion made in paragraph 3 of the very same annexure. For the sake of convenience, the said part is extracted hereafter:

“3. Further, a perusal of return of income filed by the assessee, RISHAB GARG, for the year under consideration, it is noticed that the assessee had shown total income of Rs.632350/- of the Income Tax Act, 1961. No capital gain has been shown by the assessee in his return of income.”

8. A perusal of the said extract would show, that there appears to be a

confusion, as regards the fictitious purchase made by the petitioner. This is evident, as there is a reference to the fact, that the petitioner has not showed capital gains in his Income Tax Return.

9. Concededly, the petitioner was granted time to file a reply to the notice issued under Section 148A(b) of the Act. The reply had to be filed “on or before 31.03.2022”.

10. The record shows, that the petitioner did file a reply on 28.03.2022, where he had made several assertions, including the fact that he had factored in the purchase made from the Balaji Enterprises, and that, in any event, he had paid tax on a presumptive basis, by taking recourse to the provisions of Section 44 AD of the Act. Therefore, the assertion of the petitioner was, that whether or not the purchase was fictitious would have no tax impact insofar as the petitioner was concerned.

11. However, a perusal of the order dated 10.04.2022 passed under Section 148A(d) of the Act discloses, that the Assessing Officer (AO) has not dealt with the various grounds and/or submissions made by the petitioner in his reply dated 28.03.2022. *Inter alia*, the AO had not dealt with the aspect, that he has paid tax on a presumptive basis under the provisions of Section 44-AD of the Act.

12. Besides this, clearly, the time limit for filing the reply provided under Section 148A(b) of the Act also stood breached. However, since the petitioner, in any case, had filed its reply, this aspect, at least in the instant matter, has lost its significance.

13. Therefore, according to us, the best course forward, would be to set aside the order dated 10.04.2022 passed under Section 148A(d) of the Act.

13.1 It is ordered accordingly.

14. The AO is, however, given liberty to carry out a *de novo* exercise.
15. It is made clear, that if the AO were to carry out the exercise afresh, before proceeding further, the AO will furnish the information/material available with him/her, which links the petitioner to the alleged source of fictitious purchase allegedly sourced from Balaji Enterprises.
16. In case any fresh material/information is furnished to the petitioner, the AO will grant liberty to the petitioner to file a supplementary reply, *albeit* within at least one week.
17. Further, the AO will also accord personal hearing to the petitioner and/or his authorized representative.
18. A copy of the order passed by the AO, after the aforementioned exercise is completed, shall be furnished to the petitioner.
19. The writ petition is disposed of in the aforesaid terms.
20. Consequently, pending application shall stand closed.
21. We may make it clear, that we have not examined the matter on merits. Therefore, the observations made hereinabove will not impact the exercise, which the AO may want to carry out afresh.
22. Parties will act based on the digitally signed copy of the order.

(RAJIV SHAKDHER)
JUDGE

(TARA VITASTA GANJU)
JUDGE

FEBRUARY 14, 2023 / ha