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

% *Date of Decision: 14th March, 2023*

+ **W.P.(C) 3059/2023 & CM APPL. 11847/2023**

ROHIT KAPUR Petitioner
Through: Mr. Piyush Kaushik,
Advocate.
versus

PRINCIPAL COMMISSIONER OF INCOME TAX -7,
NEW DELHI & ANR. Respondents
Through: Mr. Asam Chawla, Sr.
Standing Counsel, Ms.
Anuja Pethia, Sr. Standing
Counsel and Mr. Rishabh
Nongia, Sr. Standing
Counsel.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J. (Oral)

1. Issue notice. Learned counsel appearing for respondent accepts notice. The petition is taken up for hearing.
2. The petitioner has filed the present petition impugning an order dated 31.01.2023 whereby the petitioner's application for immunity under Section 270AA of Income Tax Act, 1961 (hereafter '**the Act**') was rejected on the ground that the same was beyond the stipulated period available for filing the said application.
3. The petitioner is an individual and had filed his return for the assessment year 2020-2021 on 16.12.2020 declaring a total income of Rs. 1,73,72,262/-.
4. The petitioner's return was picked up for scrutiny under

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Section 143(3) of the Act. The said proceedings culminated in an assessment order dated 23.09.2022, whereby the Assessing Officer disallowed certain expenditure quantified at Rs. 22,08,857/- as, according to the Assessing Officer (AO) the same was estimated to be the petitioner's personal expense.

5. The AO issued the notice of demand dated 23.09.2022, raising a tax demand of Rs. 9,37,329/-. The petitioner discharged the said demand on 24.09.2022.

6. In terms of the order dated 23.09.2022, the petitioner was also called upon to show cause why penalty under Section 270A of the Act not be issued. The said penalty notice was followed by another notice dated 14.12.2022.

7. On 19.12.2022, the petitioner filed an application under Section 270AA(2) seeking immunity from penalty proceedings.

8. The said application was dismissed by the impugned order.

9. It is the petitioner's case that the petitioner has substantially complied with all conditions for availing the said immunity. It had accepted the assessment order and discharged the liability against tax and interest. The petitioner had also not filed an appeal against the said assessment order.

10. Concededly, the said application was filed after the delay of 48 days. The petitioner claims that the delay in filing of the application under Section 270AA of the Act was on account of some technical glitches in the portal which prevented the said application from being uploaded within time.

11. Mr. Piyush Kaushik, learned counsel appearing for the petitioner submits that the petitioner has a valid explanation for the delay and the impugned order is liable to be set aside on the ground that the petitioner had not been afforded an opportunity of being heard. He also submits that remanding the matter to the

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concerned authority would not be a futile formality as the petitioner has substantive explanation for the delay. He also contends that the concerned authority has the power to condone the same.

12. Before proceeding further, it is relevant to refer to Sub-section 4 of Section 270AA of the Act, which reads as under:

270AA xxxx

xxxx

xxxx

The Assessing Officer shall, within a period of one month from the end of the month in which the application under sub-section (1) is received, pass an order accepting or rejecting such application:

Provided that no order rejecting the application shall be passed unless the assessee has been given an opportunity of being heard.

xxxx

xxxx

xxxx

xxxx

13. The proviso to Sub-section(4) of Section 270AA of the Act makes it amply clear that before an application is rejected, the applicant must be given an opportunity of being heard. In the present case, there is no dispute that the petitioner was not afforded the said opportunity.

14. In view of the above, this Court considers it apposite to set aside the impugned order as the same has been passed without following the procedure as set out in Section 270AA(4) of the Act.

15. In so far as the petitioner's contention that the concerned officer is empowered to condone the delay and that the petitioner has substantial explanation for the delay is concerned, we are refraining from making any observations. We are of the view that it would be apposite that the concerned officer considers these submissions at the first instance.

16. In view of the above, impugned order is set aside. The matter is remanded to the concerned officer (Respondent no.2) to

consider the petitioner's application under Section 270AA of the

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Act afresh. To avoid any further procedural delay, this Court directs the petitioner to appear either personally or through an authorized representative before Respondent no.2 at 11.00 AM on 05.04.2023 to avail the opportunity of being heard.

17. Respondent no.2 shall consider the petitioner's submission and pass a fresh order as it deems fit in accordance with law.

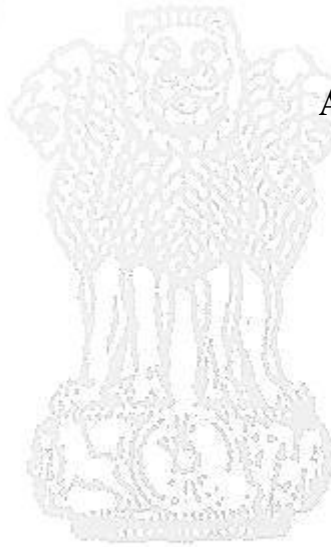
18. The petition is disposed of in the aforesaid terms.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

MARCH 14, 2023

'MR'



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