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

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Date of Decision: 22.03.2023

+ **W.P.(C) 3577/2023 & CM No.13841/2023**

ALANKAR APARTMENTS PVT LTD

..... Petitioner

Through: Mr Anand Kiron Chaudhuri,
Advocate.

versus

DEPUTY COMMISSIONER OF
INCOME TAX CIRCLE 1(1)

..... Respondent

Through: Mr Sanjay Kumar, Sr. Standing
Counsel with Ms Hemlata Rawat,
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)

W.P.(C) 3577/2023 & CM No.13841/2023 *[Application filed on behalf of
the petitioner seeking interim relief]*

1. Issue notice.
- 1.1 Mr Sanjay Kumar, learned senior standing counsel, accepts notice on behalf of the respondent/revenue.
2. Mr Kumar says, that in view of the order that we intend to pass, counter-affidavit need not be filed, and that we may proceed, based on the record presently available with the Court.
3. Accordingly, 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. We may note, that at the very outset, Mr Anand Chaudhuri, learned counsel for the petitioner, has brought to our notice, the judgment dated 17.02.2023 passed in W.P.(C) 2115/2023, titled *Alankar Apartment Pvt. Ltd. v. Assistant Commissioner of Income Tax Circle 1(1)*. As is evident, this judgment was rendered in a matter involving the petitioner, *albeit*, concerning Assessment Year (AY) 2017-18.

5. Mr Chaudhuri says, that the issues involved in the instant writ petition also obtain in W.P.(C) 2115/2023.

6. The principal allegation against the petitioner is, that the Work Contract Tax (WCT), as compared to the previous Financial Years (FYs), has increased substantially, and that no payment has been made by the petitioner.

7. According to the Assessing Officer (AO), in the FY in issue i.e., FY 2015-16 [AY 2016-17], the petitioner had declared, as on 31.03.2016, statutory liability amounting to Rs.8,51,65,846/-, whereas the statutory liability for the preceding FY was Rs.1,16,27,466/-. Thus, according to the AO, since this statutory liability had increased, which had not been liquidated, income chargeable to tax amounting to Rs.7,35,38,380/- had escaped assessment. This figure, as is evident, is the difference between Rs.8,51,65,846/- and Rs.1,16,27,466/-.

8. A perusal of the record shows, that the petitioner had filed a reply dated 14.06.2022 to the notice issued to the petitioner on 23.05.2022 under Section 148A(b) of the Income Tax Act, 1961 [in short, “Act”].

8.1 The reply concerns several aspects. However, insofar as the aforementioned aspect is concerned, the petitioner categorically took the position, that the statutory liability for the AY in issue i.e., AY 2016-17,

amounting to Rs.8,51,65,846/- had been paid in the subsequent year.

9. Furthermore, it was also asserted, that the petitioner had not claimed as expenditure the taxes, which were payable, and had remained unpaid in the period in issue i.e., AY 2016-17.

9.1 For this purpose, the relevant documents, including the balance sheet for AY 2016-17 as on 31.03.2016, were furnished to the AO. Besides this, we are told, that challans concerning liquidation of the aforementioned statutory liability were also furnished. The copies of these challans are appended at pages 96 to 98 of the case file.

10. In sum, it was the petitioner's stand, that statutory dues concerning withholding tax, service tax and outstanding labour cess, in no circumstances, would constitute income chargeable to tax which had escaped assessment.

11. We may note, that these are aspects which have not been dealt with by the AO, while passing the order dated 30.07.2022 under Section 148A(d) of the Act.

12. The AO, in the order dated 30.07.2022 has *inter alia*, in paragraph 8 and 9 stated the following:

"8. The assessee further submitted that the company has duly declared its statutory liability as on 31.03.2016 of Rs. 8,51,65,846/- which were subsequently paid. These are as per books of accounts. These are as per audited balance sheet filed with the Dept. In the note no. 5 of the Audited Financials under the head "Other Current Liabilities" statutory liabilities have been duly reflected, it is Rs. 8,51,65,074/- as on 31.03.2016 and Rs. 1,16,27,446/- as on 31.03.2015. It even furnished copy of the challans showing that such liabilities on account of TDS were paid in the subsequent financial year that is between the period 11.04.2016 to 01.10.2016.

9. It is observed that the assessee has not fully paid the statutory liabilities which are accumulating in the balance sheet. The same has to be considered as part of receipts if they are not paid by the due date as per the provisions of section 43B of the Income Tax Act."

12.1 According to us, the aforementioned observations made by the AO missed the crucial fact, which is the petitioner's stand, that it never claimed deductions concerning unpaid taxes adverted to hereinabove.

13. Given these circumstances, the impugned order dated 30.07.2022 passed under Section 148A(d) of the Act is set aside.

14. The AO will carry out a *de novo* exercise. The AO will accord personal hearing to the authorised representative of the petitioner. For this purpose, the AO will issue a notice, which will set forth the date and time of the hearing.

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

16. Needless to add, the observations made hereinabove will not impact the merits of the matter.

17. Resultantly, pending application shall also stand disposed of.

(RAJIV SHAKDHER)
JUDGE

(TARA VITASTA GANJU)
JUDGE

MARCH 22, 2023/ ha