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

% *Date of decision: 24.03.2023*

\+ **W.P.(C) 3671/2023**

ORNATE AGENCIES PRIVATE LIMITED ..... Petitioner
Through: Mr Ruchesh Sinha, Advocate.

versus

ACIT CIRCLE 19(1) NEW DELHI & ANR. ..... Respondents
Through: Mr Aseem Chawla, 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.14241/2023

1. Allowed, subject to the just exceptions.

W.P.(C) 3671/2023 & CM Appl.14240/2023*[Application filed on behalf of the petitioner seeking interim relief]*

2. This writ petition concerns Assessment Year (AY) 2017-18.

3. Issue notice.

3.1 Mr Aseem Chawla, learned senior standing counsel, accepts notice on behalf of the respondents/revenue.

4. In view of the order that we intend to pass, Mr Chawla says that no counter-affidavit is required to be filed. Therefore, with the consent of the counsels for the parties, the writ petition is taken up for final hearing and disposal, at this stage itself.

5. The principal allegation against the petitioner is that a huge credit is reflected in its bank account. There is a reference to the fact that funds have been credited to its bank account amounting to Rs. 48,68,62,905/-.

6. Mr Ruchesh Sinha, who appears on behalf of the petitioner, submits that the petitioner, in his reply dated 02.06.2022, has given a breakup of the aforementioned amount.

6.1 For this purpose, our attention has been made to paragraph 4 of the said reply.

Particulars	Amount (in Rs.)	Annexure Ref.
Sales Proceeds received from customers during the period 9th November to 31st December 2016 which are reproduced from page no. 3 of your letter ref F No. DDIT (Inv.)/Unit-7(3)/ED/2020 - 21 dated 11th March 2021 which is attached with the reassessment notice dated 20th May 2022 as Annexure 1.	19,89,30,232	Annexure 2
Internal Fund Transfers from the Company's HDFC Account No. 05032320001907 to Account No. 036911310004974 in OBC	7,07,00,000	Annexure 3
Internal Fund transfers from the Company's CC Account No. 03694011000394 in OBC to Current Account No. 036911310004974 in OBC	5,80,00,000	Annexure 4
Encashment of auto sweep in FDs in OBC to Current	15,92,25,000	Annexure 5

Account No. 036911310004974 in OBC		
Bank interest credited to Account No. 036911310004974 in OBC on the above Sweep in FDs made during the period 9th November to 31st December 2016	7,673	Annexure 6
Grand Total as per your notice for Reassessment	**48,68,62,905**	

7. Furthermore, Mr Sinha says that these very aspects were considered by the Assessing Officer (AO) during scrutiny assessment and it was only thereafter, the order dated 25.12.2019 was passed under Section 143(3) of the Income Tax Act, 1961 [in short, the "Act"].

7.1. Furthermore, it is submitted by Mr Sinha that the reassessment proceedings are flawed, *inter alia*, for the following reasons, besides what has been indicated hereinabove i.e., that it is a case of change of opinion:

(i) The reassessment proceedings are not backed by the approval of the specified authority, as is required under Section 151(ii) of the Act.

(ii) The AO has failed to quantify the income chargeable to tax, which, according to him, has escaped assessment.

7.2. In this context, our attention is drawn to paragraph 8 of the order dated 26.07.2022 passed under Section 148A(d) of the Act. For the sake of convenience, the said paragraph is extracted hereafter:

> *"8. In view of the above* ***it emerges that the income to the extent of Rs.50,00,000/- or exceeding Rs.50 lacs representing asset has escaped assessment****. Hence* ***it is a fit case for issuance of notice u/s 148."***

[Emphasis is ours]

8. Clearly, there has been no application of mind by the AO. The AO has failed to reach a definitive conclusion as to what is the escaped income in the instant case. In that view of the matter, the impugned order dated 26.07.2022 passed under Section 148A(d) of the Act and consequent notice of even date i.e., 26.07.2022 are set aside.

9. Liberty is, however, given to the AO to pass a fresh order.

9.1 The AO will ensure that the personal hearing is granted to the authorized representative of the petitioner. For this purpose, the AO will issue a notice to the petitioner indicating date and time of the hearing.

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

11. Parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

MARCH 24, 2023
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