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

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Date of decision: 28.03.2023

+ **W.P.(C) 3957/2023**

SHUKLA ENTERPRISES PRIVATE LIMITED Petitioner
Through: Mr Shiven Khurana, Advocate.

versus

ASSISTANT COMMISSIONER OF INCOME TAX- CIRCLE 22(2)
DELHI & ANR. Respondents

Through: Mr Ruchir Bhatia, Sr. Standing
Counsel with Ms Priya Sarkar, Jr.
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. 15431/2023

1. Allowed, subject to just exceptions.

W.P.(C) 3957/2023 and CM APPL. 15432/2023 [*Application filed on behalf of the petitioner seeking interim relief*]

2. Issue notice.

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

3. In view of the order that we propose to pass, Mr Bhatia says that he will proceed on the basis of record presently available with the court.

4. Therefore, with the consent of counsel for the parties, the writ petition is taken up for hearing and final disposal.

5. This writ petition is directed against order dated 29.07.2022 passed under Section 148A(d) and the consequential notice dated 30.07.2022 passed under Section 148 of the Income Tax Act, 1961 [in short, “the Act”].

5.1 Besides this, challenge is also laid to the show cause notice dated 25.05.2022 issued under Section 148 A(b) of the Act.

6. The principal allegation against the petitioner is that it is one of the beneficiaries of accommodation entries provided by BKR Capital Pvt. Ltd. (in short, “BKR”) This entity, according to the respondents/revenue, is controlled by one, Bajrang Lal Periwal.

6.1 It is alleged that the petitioner had received, in Financial Year (FY) 2016-2017 [Assessment Year (AY) 2017-2018], Rs.50,00,000/- as unsecured loans.

7. Learned counsel for the petitioner says that two responses dated 08.06.2022 and 28.08.2022 were filed. While the first one was directed to the notice issued under Section 148A(b), the second response was tendered after the order under Section 148A(d) of the Act had been passed.

7.1 *Inter alia*, the petitioner appears to have taken the stand that during the period in issue, it had not taken loan from BKR, as alleged, but had repaid Rs.50,00,000/- to the said entity.

7.2 More importantly, counsel for the petitioner says that, concededly, the entire set of documents was not furnished to the petitioner. It is stated that at the relevant point in time, the stand taken was that since the material/information exceeded 5MB, it could not be uploaded on the ITBA portal, and that it would be sent separately to the petitioner.

7.3 We are informed that the petitioner, in its aforementioned replies, had raised this issue, i.e., that it had not received the material/information based on which allegations have been leveled against the petitioner. In particular, counsel for the petitioner draws our attention to page 49, which adverts to the Case Related Information Detail (CRID).

7.4 In the CRID, there is reference to statements made by Bajrang Lal Periwal, Ram Sogarth Mahto, Neelam Devi, Mahendra Mondal and Khuswant Singh Rawat.

7.5 Counsel for the petitioner says that none of the statements supposedly made by the aforementioned persons have been furnished to the petitioner.

7.6 Counsel for the petitioner says that the petitioner has also not been furnished a copy of “Part of Search Appraisal Report.”

8. Given this position, we are inclined to set aside the impugned order dated 29.07.2022 and the notice issued under section 148 of the Act dated 30.07.2022.

8.1 Liberty is, however, given to the Assessing Officer (AO) to take next steps in the matter, *albeit* as per law.

8.2 Before the AO proceeds further in the matter, he will furnish the entire material/information which is in his possession and that which finds mention in the CRID. In such an eventuality, i.e., if material/information is furnished, the AO will provide opportunity to the petitioner to file a supplementary reply.

9. Furthermore, the AO will also afford personal hearing to the authorized representative of the petitioner. The AO will issue a notice, which would indicate the date and time of the hearing.

10. Since we have set aside the aforementioned order and notice, the

notice dated 20.03.2023 issued under Section 142(1) of the Act shall, quite obviously, collapse.

11. The writ petition is disposed of in the aforesaid terms.
12. Pending application/s shall also stand closed.
13. Parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

MARCH 28, 2023 / tr