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

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Date of Decision: 27.04.2023

+ **W.P.(C) 4444/2023 & CM Appl.17040/2023**

NEHA AVIATION MANAGEMENT P LTDPetitioner

Through: Ms Smriti Sahay, Adv.

versus

ASSESSMENT UNIT, INCOME TAX DEPARTMENT
AND ORS.

..... Respondents

Through: Mr Gaurav Gupta, Sr Standing
Counsel with Mr Puneet Singh and
Mr Shivendra Singh, Advs.

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):

1. This writ petition concerns Assessment Year (AY) 2018-19.
2. The petitioner has assailed the impugned order dated 18.03.2023 passed under Section 147 read with Section 144B of the Income Tax Act, 1961 [in short, "Act"].
3. Besides this, challenge has also been laid to the demand notice of even date i.e., 18.03.2013 issued under Section 156 of the Act.
- 3.1 In addition thereto, challenge is also laid to the penalty notice, which is also dated 18.03.2023 and issued under Section 274 read with section 271AAC(1) of the Act.

4. The petitioner has also impugned the notice dated 11.03.2022 issued under Section 148A(b), and the order dated 27.03.2022 passed under Section 148A(d) of the Act. This apart, the petitioner has also laid a challenge to the consequential notice of even date i.e., 27.03.2022 issued under Section 148 of the Act.

5. On the previous date i.e., 11.04.2023, when the matter was listed before the Court, we had captured the broad contours of the case.

5.1 For the sake of convenience, the relevant parts of the order are set forth:

“...3. The principal allegation against the petitioner is, that it has entered into a transaction concerning an unsecured loan with a dummy entity. The dummy entity, according to the respondents/revenue, is Odisha Finlease Pvt. Ltd. The transaction has been valued at Rs.1,48,38,340/-.

4. Ms Smriti Sahay, who appears on behalf of the petitioner, says that in the AY in issue i.e., AY 2018-2019 [Financial Year (FY) 2017-2018] the petitioner has not taken any loan from the said entity.

4.1 Ms Sahay says that loan was taken in immediately preceding AY i.e., AY 2017-2018 (FY 2016-2017). This loan, according to the learned counsel, has been repaid.

5. We are also informed, that by way of loan, a sum of Rs.2.5 crores was received by the petitioner.

6. Before we proceed further, we would like the petitioner to place on record, the relevant bank statements for FY 2016-2017 and FY 2017-2018. These bank statements will be placed on record within the next ten days. Copy of the same will be furnished to Mr Gaurav Gupta, learned senior standing counsel, who appears on behalf of the respondents/revenue.

7. Needless to add, the documents placed on record will be supported by an affidavit.

8. List the matter on 27.04.2023.”

6. In consonance with the directions issued on 11.04.2023, the petitioner has filed a copy of the bank statements of the concerned bank account. A perusal of the bank statements shows, that between 17.06.2016 and 01.07.2016, the petitioner was in receipt of five tranches of Rs.50 lakhs; the

total amount being Rs.2.5 crores.

6.1 Furthermore, the bank statements also reveal, that in the Financial Year (FY) in issue i.e., 2017-18, Rs. 2 crores, along with interest amounting to Rs.13,80,822/- was remitted to the purported lender i.e., Odisha Finlease Private Limited [in short, “OFPL”].

6.2 The interest was remitted, it appears, on 06.09.2017, whereas the payments were made on the following dates: 12.06.2017, 27.11.2017, 12.12.2017 and 21.12.2017.

7. It is also the case of the petitioner, that against the payments made, tax at source was deducted. In support of this plea, reliance is placed on the TDS certificates placed on record.

8. In sum, it is the stand of the petitioner, that the transaction, which was entered into between the petitioner and OFPL was a genuine transaction. It is also the assertion of the petitioner, that in response to the show-cause notice dated 03.03.2023 issued to the petitioner, a detailed reply was filed, and that the assertions made therein have not been dealt with by the Assessing Officer (AO).

8.1 In particular, emphasis is laid by Ms Smriti Sahay, who appears on behalf of the petitioner, on the aspect that although a request was made to the AO to grant personal hearing in the matter *via* video-conferencing, the same was not accorded.

9. Mr Gaurav Gupta, learned senior standing counsel, who appears on behalf of the respondents/revenue cannot but accept, that the principles of natural justice have been breached.

10. Therefore, for the moment, without taking a deep dive into the merits of the various assertions made by the petitioner, the impugned order and

notices are set aside, with liberty to the AO to carry out a *de novo* exercise.

10.1 In case the AO decides to carry out a *de novo* exercise, he will issue a notice to the petitioner, which would indicate the date and time fixed for according hearing in the matter.

10.2 The AO, while rendering a decision in the matter, will deal with the assertions made by the petitioner in the instant writ petition.

11. Needless to add, the AO will pass a speaking order.

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

12.1 Consequently, pending application shall stand closed.

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

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

APRIL 27, 2023/pmc