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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 12.04.2023
+ **W.P.(C) 4510/2023 & CM Appl.17287/2023**

PRATEEK CHITKARA Petitioner
Through: Mr Ruchesh Sinha with Mr Rakesh
Kumar, Advs.
versus

JOINT COMMISSIONER OF INCOME TAX CENTRAL
CIRCLE 2 & ANR. Respondents
Through: Mr Ruchir Bhatia, Sr Standing
Counsel.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORDER
12.04.2023
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[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER,J.: (ORAL)

1. Issue notice.
 - 1.1 Mr Ruchir Bhatia, learned senior standing counsel, accepts notice on behalf of the respondents/revenue.
2. In view of the order that we propose to pass, Mr Bhatia says that he does not wish to file a reply and that he would argue the matter based on the records presently available with the court.
 - 2.1 Therefore, with the consent of the parties, the writ petition is taken up for final hearing and disposal.
3. This writ petition is directed against the penalty order dated 29.03.2023 passed by respondent no.1/revenue under Section 41 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of

Tax Act, 2015 [in short, “B.M. Act”].

4. To be noted, the impugned order concerns Assessment Year (AY) 2019-20.

5. The record shows that the petitioner/assessee has preferred an appeal against the quantum levy, which is pending before the Commissioner of Income Tax (Appeals) [in short, “CIT(A)”].

5.1 The record shows that prior to the impugned penalty order being passed, a show cause notice dated 02.03.2023 was issued under Section 41 of the B.M. Act.

5.2 *Via* this notice, the petitioner/assessee was granted an opportunity to appear in person, in defence of his case. The date fixed for this purpose was 09.03.2023.

5.3 The record also shows that the petitioner/assessee filed a reply on 09.03.2023, *albeit* via email of even date. This aspect is evident on perusal of Annexure-6 (Colly), appended on pages 98 to 100 of the case file.

5.4 It appears that the concerned officer missed this aspect and proceeded to pass the impugned penalty order. The error in this behalf is evident upon perusal of paragraphs 3.2 and 4 of the penalty order. For the sake of convenience, the relevant paragraphs of the impugned penalty order are extracted hereafter:

3.2 Notice under section 41 of the Black Money Act was accordingly issued on 30.03.2022 the Dy. Director of Income Tax (Inv.), Unit 4(4), New Delhi. Final show cause notice u/s 41 of the B M Act was issued on 02.03.2023 wherein assessee has been provided another opportunity for filing his submissions if any and the case was fixed for 09.03.2023.

4. Assessee has not furnished any submission. Since the assessee has not furnished anything, therefore, I am left with no alternate but to proceed to levy the penalty u/s 41 of the B M Act on the basis of discussion made in the assessment order.

6. We may note that in the reply filed by the petitioner/assessee, his assertion was that the penalty proceedings should be kept in abeyance, having regard to the fact that the appeal preferred by him on the quantum levy was pending before the CIT(A).

6.1 In support of this plea, reference was made to certain decisions.

7. Furthermore, it is also relevant to note that the impugned penalty order has been passed by an officer attached to Central Range-2, Delhi.

8. According to Mr Ruchesh Sinha, who appears on behalf of the petitioner/assessee, Clause(b) of sub-section (4) of Section 46 of the B.M. Act, in the instant case, requires that the penalty order should have been passed by the officer who is in the rank of Assistant Commissioner or Deputy Commissioner or Assistant Director or Deputy Director, *albeit*, with the approval by the Joint Commissioner or the Joint Director.

8.1 It is Mr Sinha's contention that this is not the position which emerges upon perusal of the penalty order, and that this is another ground on which the impugned penalty order deserves to be set aside.

9. We have heard counsel for the parties.

10. According to us, the second aspect of the matter to which we have made reference hereinabove by adverting to the provisions of Section 46(4)b) of the B.M. Act, in fact, was not articulated in the reply filed by the petitioner/assessee on 09.03.2023.

11. That being said, the petitioner/assessee's reply was on record which, for some reason, was not taken into account by the concerned officer while passing the impugned penalty order.

11.1 To our minds, this alone would be sufficient to set aside the impugned penalty order, with a direction to the concerned authority to conduct a *de*

novo exercise.

11.2 It is ordered accordingly.

12. However, insofar as the second aspect of the matter is concerned, which may go to the jurisdiction of the concerned authority, liberty is given to the petitioner/assessee to raise the same before them. If such an objection is raised, the concerned authority will take appropriate steps in the matter.

13. The writ petition is disposed of, in the aforesaid terms.

14. It is made clear that we have not examined the merits of the case and therefore, any observations made hereinabove will not impact the decision that the concerned authority may take on the aspect as to whether or not penalty should be levied on the petitioner/assessee.

15. Consequently, pending application shall stand closed.

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

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

APRIL 12, 2023/pmc

Click here to check corrigendum, if any