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* **IN THE HIGH COURT OF DELHI AT NEW DELH**
% ***Date of decision: 12.04.2023***

\+ **W.P.(C) 4601/2023 & CM APPL. 17579-17580/2023**
CHARU FINEAGRO PVT. LTD. ..... Petitioner
Through: Mr Ruchesh Sinha, Adv. with Ms Nivedita Jha and Ms Vaishali, Advs.

versus

ITO WARD 6 (1) NEW DELHI & ANR. ..... Respondents
Through: Mr Vipul Agarwal, Sr. Standing Counsel with Ms Shakshi Shairwal and Mr Gibran Naushad, 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)

CM APPL. 17580/2023

1. Allowed, subject to just exceptions.

W.P.(C) 4601/2023 & CM APPL. 17579/2023 ***[Application filed on behalf of the petitioner seeking interim relief].***

2. Issue notice.

2.1 Mr Vipul Agarwal, senior standing counsel, who appears on behalf of the respondents/revenue, accepts notice.

3. Mr Agarwal says that in view of the order that we propose to pass, counter-affidavit is not required to be filed and he will argue the matter based on the material available on court record.

4. With the consent of parties, the writ petition is taken up for final hearing and disposal at this stage itself.

5. This writ petition is directed against the order dated 31.07.2022 passed under Section 148A(d) and the consequential notice of even date, i.e., 31.07.2022, issued under Section 148 of the Income Tax Act, 1961 [in short, "the Act"].

6. Besides this, challenge is laid to the notice dated 27.05.2022 issued under Section 148A(b) of the Act.

7. In addition thereto, the petitioner/assessee has also assailed the order dated 16.03.2023 passed by the Assessing Officer (AO), whereby objections preferred by it were disposed of.

8. The record shows that the principal allegation against the petitioner/assessee is that it is a beneficiary of accommodation entry provided by Mr Anand Kumar Jain and Naresh Kumar Jain [hereinafter called "Jain brothers"] *via* certain dummy entities.

9. According to the respondents/revenue, the petitioner/assessee received Rs. 68,50,000/- during the Financial Year (FY) 2014-15.

10. This broad allegation is contained in the notice dated 27.05.2022 served on the petitioner/assessee.

11. The petitioner/assessee, in response thereto, filed a reply dated 03.06.222. In the reply, the petitioner/assessee, *inter alia,* took the position that during FY 2014-15, it had taken unsecured loans from related and unrelated parties.

11.1 The details with respect to both related and unrelated parties are set forth in the paragraph 8 of the said reply.

12. Insofar as the unrelated parties are concerned, the petitioner/assessee claimed that it had received Rs. 35,00,000/-.

13. It may also be relevant to note that the petitioner/assessee accepted

that he had received unsecured loan, but the amount to which the petitioner/assessee admitted was Rs. 2,70,00,000/-, and not 6,85,00,000/-, as was put to the petitioner/assessee, in the notice issued under Section 148A(b) of the Act.

14. Thus, out of Rs. 2,70,00,000/-, the petitioner/assessee asserted in the said reply that Rs. 35,00,000/- was received from unrelated parties, and the balance of Rs. 2,35,00,000/- was received from related parties.

15. The unrelated parties to which the petitioner made reference are the following:

(i) Como Info Solutions Pvt Ltd;

(ii) Karda Traders Pvt Ltd;

(iii) Next Generation Exim Pvt Ltd.

16. Strangely, the AO while noticing the reply filed by the petitioner, has adverted to the amount said to have been repaid by the petitioner to the Jain brothers.

17. This aspect of the matter emerges by reading together both paragraph 8.1 of the order passed under Section 148A(d) and the order dated 16.03.2023, whereby the objections filed by the petitioner were disposed of by the AO.

18. For the sake of convenience, paragraph 3 of the order dated 16.03.2023 is set forth hereinafter:

> *"3. The objection of the assessee on the above point was considered minutely but not found tenable. Apart from the loan taken of Rs. 35,00,000/- from the paper and dummy companies as stated above, the assessee has repaid loan of Rs.48,50,483/- to the various dummy and paper companies controlled and managed by Sh. Anand Kumar Jain and Sh. Naresh Kumar Jain (the Jain Brothers) who are in the business of providing accommodation entries to various beneficiaries. Thus the total transactions is more than Rs. 50,00,000/- and thus notice u/s 148 of the*

Act was rightly issued to the assessee."

19. According to us, there is a complete non-application of mind. The payment of loan by the petitioner could not have been added to the loan amount, which the petitioner claims, was received from unrelated parties.

20. The attempt appears to be to, somehow, take the amount which, according to the AO, escaped assessment, over the threshold limit of Rs. 50 lakhs.

21. In our view, the impugned order passed under Section 148A(d), the consequential notice issued under Section 148 of the Act and the order dated 16.03.2023 cannot be sustained. Accordingly, the orders and the notices are set aside.

22. Liberty is, however, given to the AO to carry out a *de novo* exercise. The AO will issue notice to the petitioner in that behalf. The AO will also grant a personal hearing to the authorised representative of the petitioner, the notice will indicate the date and time of the hearing.

23. In case, the AO has any material in his possession which has not been furnished up until now to the petitioner, the same shall be furnished to the petitioner, before proceeding in the matter.

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

25. Accordingly, the above captioned writ petition is disposed of, in the aforesaid terms.

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

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

APRIL 12, 2023/SA