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

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Date of decision: 25.05.2023

+ **W.P.(C) 4762/2023 & CM APPLs.18357-58/2023**

CREATIVE ARTS EDUCATION SOCIETY Petitioner

Through: Mr Rohit Jain, Mr Aniket D. Agrawal and Mr Abhishek Singhvi, Advocates.

versus

ASSISTANT COMMISSIONER OF INCOME TAX & ORS.

..... Respondents

Through: Mr Aseem Chawla, Sr Standing Counsel with Mr Rishabh Nangia, Ms Pratishtha Choudhary and Mr Aditya Gupta, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE GIRISH KATHPALIA

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

RAJIV SHAKDHER, J.: (ORAL)

CM APPL. 18358/2023

1. Allowed, subject to just exceptions.

CM APPL. 28565/2023

2. This is an application filed on behalf of the petitioner for advancing the date of hearing in the matter.



3. Mr Rohit Jain, counsel for the applicant/petitioner says that the application has been moved, as in a matter involving a similar issue, the Court has disposed of the writ petition and passed directions to the effect that the Assessing Officer (AO), after hearing the petitioner, will pass a speaking assessment order.

4. Mr Aseem Chawla, learned senior standing counsel for the respondents/ revenue says, that he has no objection to the Court allowing the prayer made in the application. Accordingly, the prayer made in the early hearing application is allowed.

W.P.(C) 4762/2023 & CM APPL. 18357/2023 *[Application filed on behalf of the petitioner seeking interim relief]*

5. Issue notice.

5.1 Mr Aseem Chawla, learned senior standing counsel, who appears on behalf of the respondents/revenue accepts notice. In view of the directions that we propose to issue, Mr Chawla says that he does not wish to file a counter-affidavit in the matter, and he will argue the matter, based on the record presently available with the Court.

6. Therefore, with the consent of counsel for parties, the writ petition is taken up for hearing and final disposal, at this stage itself.

7. This writ petition is directed against the order dated 30.07.2022 passed under Section 148A(d) of the Income Tax Act, 1961 [in short, "Act"]. Besides this, challenge is also laid to the consequential notice dated 31.07.2022 issued under Section 148 of the Act.



7.1 In addition, the petitioner has also assailed the earlier notice dated 07.06.2021 issued under Section 148 of the Act, as also the consequent letter, which is a notice issued under Section 148A(b) of the Act dated 23.05.2022.

8. Mr Rohit Jain, learned counsel who appears on behalf of the petitioner makes two broad submissions in support of the petitioner's case.

(i) First, that the notice dated 23.05.2022 issued under Section 148A(b) of the Act is unsustainable in law. According to Mr Jain, in the said notice, there is a reference to the decision of the Supreme Court rendered in ***Union of India vs Ashish Aggarwal, (2022) 444 ITR 1 (SC)***.

8.1 It is Mr Jain's contention, that limitation for the Assessment Year (AY) in issue, which is AY 2019-20 would have expired, at the relevant time, only on 31.03.2023. Therefore, the respondents/revenue could not have taken recourse to the leeway granted via the aforementioned decision rendered by the Supreme Court.

(ii) Second, the genesis of the reassessment triggered against the petitioner is a survey, which was conducted on 22.12.2020 qua the petitioner and "other persons". It is contended, that because of this survey, reassessment proceedings were triggered for AYs 2013-14 to 2017-18.

9. Mr Jain says, that a perusal of the record concerning AYs 2013-14 to AY 2017-18 would show that the reasons which propelled the Assessing Officer to initiate proceedings under Section 147-148 of the Act, were no



different from those which have triggered reassessment proceedings for AY 2019-20.

10. As a matter of fact, Mr Jain says, that the regular assessment carried out in AY 2018-19, and scrutiny assessment carried out in AY 2020-21 has also dealt with the issues which are subject matter of the AY with which the instant writ petition is concerned i.e., AY 2019-20.

11. In sum, it is Mr Jain's contention, that these aspects which were put to the Assessing Officer by the petitioner in its communication dated 13.06.2022 have not been considered by the Assessing Officer, while passing the order dated 30.07.2022 under Section 148A(d) of the Act.

12. Mr Chawla says, that insofar as the first contention advanced by Mr Jain is concerned, the same is unsustainable in law. Since limitation had not expired at the relevant point in time, the notice dated 23.05.2022 issued under Section 148A(b) of the Act is sustainable, notwithstanding reference, as contended by Mr Jain, to the judgment of the Supreme Court in *Ashish Aggarwal*'s case.

13. As regards the other aspect, Mr Chawla says, that since an assessment order has not been passed for AY 2019-20, the Assessing officer could consider the record of the earlier AYs, and the reasons for dropping those proceedings, to which Mr Jain has made a reference.

14. We have heard learned counsel for the parties. We are in agreement with Mr Chawla, that the notice dated 23.05.2022 issued under Section 148A(b) of the Act cannot be declared as being untenable in law, since even



according to Mr Jain, the limitation qua AY 2019-20 would have expired only on 31.03.2023.

15. Merely because there is a reference to the judgment of Supreme Court in **Ashish Aggarwal's** case, which according to Mr Jain would not apply qua the AY in issue, it would not render the notice untenable, as it is the common case of counsel for parties that after 01.04.2021, notices could have been issued only under the new regime.

16. Mr Jain cannot but accept, that the notice dated 23.05.2022 has been issued under the new regime i.e., under Section 148A(b) of the Act.

17. However, Mr Jain's argument carries weight, insofar as the second aspect is concerned i.e., that since proceedings on the very same aspects have been dropped for the other AYs, that aspect required attention of the Assessing Officer.

18. Since according to Mr Jain, assessment order has not been passed, it would be best if the Assessing Officer were to advert to the record of the earlier AYs before passing the assessment order. It is ordered accordingly.

19. We are conscious of the fact that the rule of *res-judicata* does not apply i.e., that each AY is different. That said, if the reasons for reopening are consistently similar or the same, the Assessing Officer needs to apply the principle of consistency, before passing the assessment order. [See: **Radhasaomi Satsang v CIT (1992) 193 ITR 321 (SC)**]

20. The Assessing Officer will, thus, accord personal hearing to the authorized representative of the petitioner before he proceeds further.



21. For this purpose, the AO will issue a notice to the petitioner, which would indicate the date and time of the hearing. Needless to add, the AO will pass a speaking assessment order, wherein the aforementioned aspect would be dealt with i.e., the assertion that assessments have been completed for the AYs 2018-19 and 2020-21, involving aspects which are subject matter of the AY in issue.
22. The writ petition is disposed of in the aforesaid terms.
23. Consequently, pending application shall stand closed.
24. Parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER
(JUDGE)

GIRISH KATHPALIA
(JUDGE)

MAY 25, 2023/v