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

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Date of decision: 24.07.2023

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W.P.(C) 5136/2023 & CM No.20063/2023

SHASHI BALA SHARMA (THROUGH HER AUTHORIZED
REPRESENTATIVE SHREE SURESH CHANDRA SHARMA)

..... Petitioner

Through: Mr Ruchesh Sinha with Ms Nivedita
Jha and Ms Vaishali, Advocates.

versus

INCOME TAX OFFICER WARD 59(8), DELHI & ANR.

..... Respondents

Through: Mr Viplav Acharya, Jr. Standing
Counsel and Mr Akash Saxena for Mr
Shailendera Singh, Sr. Standing
Counsel.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE GIRISH KATHPALIA

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

GIRISH KATHPALIA, J: (ORAL)

**W.P.(C) 5136/2023 & CM No.20063/2023 [Application filed on behalf of
the petitioner seeking interim relief].**

1. By way of this writ petition brought under Articles 226/227 of the Constitution of India, the writ petitioner has assailed order under Section 147 read with Section 144B of the Income Tax Act for the Assessment Year 2018-19, coupled with the demand notice under Section 156 of the Act, both dated 15.03.2023. On service of notice, the respondent revenue entered appearance through counsel, who took time to file a counter-affidavit. Vide



order dated 24.04.2023, interim protection was granted, thereby directing the respondent revenue not to take precipitate steps till further directions.

2. However, subsequently, the respondent revenue opted not to resist the petition. Learned counsel for respondent, in all fairness, conceded to the lacunae that had crept in the process culminating into the impugned assessment order and demand notice.

3. Briefly stated, the circumstances relevant for the present purposes are as follows.

3.1 By way of order dated 21.03.2022 under Section 148A(d) of the Income Tax Act, reassessment proceedings were initiated against the petitioner, a bed ridden terminally ill lady, on the basis of information received on the insight portal maintained by the Income Tax Department to the effect that she had not filed return of income relevant to the Assessment Year 2018-19 despite having received sale consideration of Rs.2,64,00,000/- pertaining to an immovable property and had received Rs.12,80,100/- as rent from the Corporation Bank, but had not furnished reply to the notice under Section 148A(b) of the Act.

3.2 According to the petitioner, owing to her severe medical condition, which led to disturbance of her entire family, her return of income was filed belatedly on 05.01.2023 in compliance with notice under Section 148 of the Act, in which she disclosed the rental income and the sale consideration of her immovable property, claiming exemption of the long term capital gain



under Section 54 of the Act.

3.3 In response, the revenue issued show cause notice dated 23.02.2023 to the petitioner, calling upon her to explain by 14:30 hours of 27.02.2023 as to why the exemption under Section 54 of the Act be not denied to her for the reason that the sale consideration in question was spent in purchase of another immovable property in the name of her son and not in her own name. Disclosing her condition with medical records, the petitioner sought adjournment for 15 days to respond to the show cause notice but the Assessment Officer allowed her time only till 04.03.2023 vide communication dated 02.03.2023. Accordingly, petitioner through her authorized representative submitted a detailed reply dated 04.03.2023, uploaded on the Income Tax portal on 04.03.2023 itself.

3.4 Ultimately, the impugned assessment order, followed by the demand notice was passed. Hence, the present writ petition.

4. According to the petitioner, in her reply dated 04.03.2023 she categorically contended that in view of the legal position settled through various judicial precedents (*cited therein*), she could not be denied the benefit of exemption under Section 54 of the Act, but in the impugned assessment order, those judicial precedents were not followed or even otherwise dealt with. Further, according to the petitioner, she had specifically requested for personal hearing in order to explain that the sale consideration of the immovable property was spent by her to purchase another immovable property in the name of her son owing to her medical



condition; but even personal hearing was not granted to the petitioner and the same is not just in violation of the process mandated under Section 144B(6)(viii) of the Act, but also grave abrogation of *jus naturale*.

5. As mentioned above, learned counsel for respondent revenue in all fairness conceded that petitioner deserves a fair hearing on the issues.

6. In the overall circumstances described above, the impugned assessment order as well as the consequent demand notice, both dated 15.03.2023 are set aside and the matter is remanded to the Assessment Officer to proceed further in accordance with law, of course, with due consideration to the judicial precedents referred to in the reply dated 04.03.2023 of the petitioner and after granting her a fair opportunity to be heard in person or through authorized representative.

7. Accordingly, the writ petition as well as the application stand disposed of. File be consigned to records.

(GIRISH KATHPALIA)
JUDGE

(RAJIV SHAKDHER)
JUDGE

JULY 24, 2023/as

Click here to check corrigendum, if any