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

Date of decision: 25.04.2023

+ **W.P.(C) 5253/2023 & CM Nos.20554-55/2023**

PUNEET KUMAR BANSAL HUF Petitioner

Through: Mr Rajeev Ahuja, Mr Arya Hardik
and Mr Jayendra Kumar Tiwary,
Advs.

versus

INCOME TAX OFFICER WARD 28(1),
DELHI & ANR.

..... Respondents

Through: Mr Shailendera Singh, Sr Standing
Counsel with Mr Viplav Acharya and
Ms Dacchita Shahi, Jr Standing
Counsels along with Mr Akash
Saxena, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORDER

25.04.2023

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

RAJIV SHAKDHER, J.: (ORAL)

CM No.20555/2023

1. Allowed, subject to just exceptions.

W.P.(C) 5253/2023 & CM No.20554/2023

2. Issue notice.

2.1 Mr Shailendera Singh, learned senior standing counsel, accepts notice on behalf of the respondents/revenue.

3. In view of the directions that we propose to pass, Mr Singh says that

no counter-affidavit is required to be filed in the matter, and that he will argue the matter based on the record presently available to the court.

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

4. This writ petition assails the order dated 30.03.2023 passed under Section 148A(d) of the Income Tax Act, 1961 [in short, “Act”].

4.1 Besides this, challenge is also laid to a consequential notice of even date, i.e., 30.03.2023 issued under Section 148 of the Act.

5. Pertinently, the impugned order and notice concern Assessment Year (AY) 2019-20.

5.1 A perusal of the notice dated 14.03.2023, issued under Section 148A(b) of the Act, shows that the principal allegation levelled against the petitioner/HUF is that it has registered bogus long term capital gains, by trading in stock of reputed entities.

5.2 It is alleged that the contract notes have been ante-dated. The allegation is that the petitioner/HUF has effectuated these bogus transactions with the aid and help of Karnam Securities Pvt. Ltd.

6. Pertinently, the foundation of the allegation is also that the petitioner/HUF is a ‘non-filer’.

6.1 Learned counsel for the petitioner/HUF has refuted the fact that the petitioner/HUF has registered bogus long term capital gains, as alleged, or at all.

6.2 It is also the contention of learned counsel for the petitioner/HUF that no material or information has been furnished by the Assessing Officer (AO) in support of this allegation.

7. Pertinently, learned counsel for the petitioner/HUF says that the AO

has failed to notice the fact that the petitioner/HUF had in fact filed the return in the AY in issue on 28.02.2020, followed by a revised return on 10.01.2021.

7.1 For this purpose, our attention has been drawn to Annexure P-4 and P-5 of the case file.

8. Having regard to the fact that the AO has failed to notice that the petitioner/HUF had in fact filed its return, we are of the view that the matter would require re-examination by the AO.

8.1 This is more so as when notice under Section 148A(b) of the Act was issued, the petitioner/HUF had sought accommodation, and in this context, had uploaded a communication dated 22.03.2023. The request for accommodation was reiterated on 29.03.2023. In this behalf, our attention has been drawn to Annexure P-8 and P-9 appended to the case file.

9. It appears that the AO, without acting on the aforementioned requests for accommodation, proceeded to pass the impugned order dated 30.03.2023 under Section 148A(d) of the Act.

10. Thus, as indicated above, the best way forward would be to set aside the impugned order to enable the petitioner/HUF to have his say in the matter. This would also allow the AO to peruse the income tax return filed by the petitioner.

11. Accordingly, the impugned order and notice are set aside.

12. The AO will, however, have liberty to carry out a *de novo* exercise. Before the AO proceeds further, he will furnish information/material concerning the petitioner/HUF which is in his possession.

13. The AO will also accord personal hearing to the petitioner/HUF. For this purpose, he will issue notice indicating the date and time.

14. The writ petition is disposed of in the aforesaid terms.
15. Pending application shall also stand closed.
16. Parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

APRIL 25, 2023

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[Click here to check corrigendum, if any](#)