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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Date of decision: 26.04.2023*

\+ **W.P.(C) 5324/2023 & CM Nos.20744/2023**
MOHIT AGARWAL ..... Petitioner
Through: Mr Piyush Kumar Kamal, Mr D.K. Gandhi, Mr Shrinkhla Baranwal and Mr Manish Mittal, Advs.

versus

INCOME TAX OFFICER & ANR. ..... Respondents
Through: Mr Kunal Sharma, Sr. Standing Counsel with Ms Zehra Khan, Jr. Standing Counsel.

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.20745/2023

1. Allowed, subject to just exceptions.

W.P.(C) 5324/2023 & CM Nos.20744/2023*[Application filed on behalf of the petitioner seeking interim relief]*

2. Issue notice.

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

3. In view of the directions that we propose to pass, Mr Sharma says that no counter-affidavit is required to be filed, and that he will argue the matter based on the record currently available with the court.

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

4. The substantive prayer made in the writ petition reads as follows:

> *"a. Issue a writ of Certiorari or any other writ, order or direction setting aside the assessment order, notice of demand u/s 156 of the Act dated 21.03.2023 signed on 23.03.2023 passed in the case of the 21.03.2023(**Annexure P-1**) and penalty notices dated 21.03.2023 (**Annexure P-2**); and*
> *b. Direct the Respondent to consider the reply dated 20.03.2023 **(Annexure P-17)** and grant personal hearing to the Petitioner before passing Assessment Order for AY 2018-19; and"*

5. The principal grievance articulated on behalf of the petitioner/assessee is that there has been a violation of principles of natural justice.

5.1 For the purpose of disposal of this writ petition, the following broad facts are required to notice:

(i) A show cause notice dated 05.03.2023 was served on the petitioner/assessee concerning Assessment Year (AY) 2018-19, with a proposal to vary the income as declared. *Via* this notice, the allegation levelled against the petitioner/assessee was that he is a beneficiary of accommodation entry provided by one, Madan Gopal Gupta, proprietor of M/s Riddhi Siddhi Polymer. The notice adverts to the fact that petitioner/assessee had registered bogus purchases, amounting to Rs.35,12,100/-.

(ii) The petitioner/assessee was called upon to submit his response by 11 hours on 11.03.2023.

(iii) The petitioner/assessee claims that on 10.03.2023, a request was made for being granted personal hearing in the matter, as he was unable to explain, in writing, the defence that he sought to take in the matter. In this context, our attention has been drawn to Annexure P-13.

(iv) The petitioner/assessee claims that notwithstanding the aforesaid, an attempt was made to upload the written response on 11.03.2023; that attempt failed because of a technical glitch. This aspect, the petitioner/assessee avers, was brought to the notice of the concerned authority *via* email dated 13.03.2023.

(v) The record also discloses that the petitioner/assessee was served with a second show cause notice dated 15.03.2023. *Via* this notice, the petitioner/assessee was called upon to submit his response once again by 1100 hours on 20.03.2023.

(vi) According to the petitioner/assessee, an attempt was made to submit a response to the designated portal, which once again failed. In this context, reliance is placed by the petitioner/assessee on an email which bears the following date and time stamp: "20.03.2023 at 15:45".

6. Mr Sharma says that two opportunities were given to the petitioner/assessee to submit a response and, therefore, there was due compliance with the principles of natural justice.

6.1 It was also Mr Sharma's contention that each time an attempt was supposedly made by the petitioner/assessee to upload a response, it was made after the deadline have been crossed.

7. We have heard learned counsel for the parties and have perused the record.

8. It is not in dispute that with Clause N.1.3 of the Standard Operating Procedure (SOP) for Assessment Unit (AU) dated 03.08.2022 required the Assessing Officer to grant a minimum timeframe of seven (7) days to the noticee for submitting a response.

9. The facts, which are not in dispute, clearly establish that both notices did not accord the stipulated timeframe to the petitioner/assessee to submit a response. The first notice granted six (6) days to the petitioner/assessee,

while the second notice accorded nine (9) days to submit a response.

10. Furthermore, as alluded to hereinabove, on 10.03.2023, in any case, the petitioner/assessee had asked for being granted personal hearing in the matter.

11. Therefore, according to us, the petitioner/assessee is right that there has been infraction of the SOP and consequent breach of the principles of natural justice.

12. We are, therefore, inclined to allow the writ petition. It is ordered accordingly.

12.1 Resultantly, the impugned assessment order and notices are set aside.

12.2 The AO is given liberty to carry out a *de novo* exercise, *albeit* in accordance with law.

12.3 In case the AO takes a decision to carry out a *de novo* exercise, he will accord a personal hearing to the petitioner/assessee, and/or his authorised representative.

12.4 If such a step is taken, the AO will also grant leave to the petitioner/assessee to file a response to the show cause notice dated 15.03.2023.

13. Needless to add, the AO will pass a speaking order, a copy of which will be served to the petitioner/assessee.

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

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

APRIL 26, 2023/r