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

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Date of Decision: 12.05.2023

+ **W.P.(C) 5654/2023 & CM 22146/2023**

DEEPAK JAIN

..... Petitioner

Through: Mr Nitin Gulati, Adv.

versus

INCOME TAX OFFICER WARD 44(1),
DELHI & ORS.

..... Respondents

Through: Mr Aseem Chawla with 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):

1. On 02.05.2023, we had heard the matter briefly, when we had recorded the following broad contour, concerning the matter at hand:

“2. This writ petition concerns Assessment Year (AY) 2017-18. 3. Mr Nitin Gulati, who appears on behalf of the petitioner, says that the reassessment proceedings are flawed for the following reasons:

(i) First, the proceedings do not have the approval of the specified authority.



(ii) Second, even according to the respondents/revenue, the escaped income is Rs.30,70,526/-. This is below Rs.50,00,000/-, which is the threshold requirement provided under Section 149(1)(b) of the Income Tax Act, 1961 [in short, “Act”].”

2. Mr Aseem Chawla, learned senior standing counsel, who appears on behalf of the respondents/revenue, cannot but accept that the escaped income, as noted by us on 02.05.2023, is below Rs.50 lakhs.
3. It is also obvious that more than three years have elapsed, since the end of the Assessment Year (AY) in issue.
4. We had indicated on 02.05.2023 that if the department were to give instructions to resist the petition, a counter-affidavit should be filed. No counter-affidavit has been filed.
5. Therefore, we will have to accept, for the moment, that the assertions made in the writ petition on facts are correct.
6. Mr Chawla cannot but accept that if the facts as set out in the petition are correct, then the reassessment proceedings cannot progress further.
7. Accordingly, prayer made in the petition is allowed.
8. Consequently, the impugned notice dated 21.05.2022 issued under Section 148A(b) and the order dated 28.07.2022 passed under Section 148A(d) of the Income Tax Act, 1961 [in short, “Act”] are quashed.
- 8.1 The consequential notice of even date i.e., 28.07.2022, issued under Section 148 of the Act is also quashed.
9. Interim order dated 02.05.2023 shall also stand vacated. Interlocutory application stands closed.



10. The writ petition is disposed of, in the aforesaid terms.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

MAY 12, 2023/pmc

