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

% *Date of decision: 08.05.2023*

+ **W.P.(C) 5856/2023**

UPINDER KUMAR WANCHOO

..... Petitioner

Through: Mr Prashant Kanha with Ms Pallavi
Gupta and Mr Apurv Prasad,
Advocates.

versus

INCOME TAX OFFICER WARD 43 6NEW DELHI & ANR.

..... Respondents

Through: Mr Pratyaksh Gupta, Jr. Standing
Counsel for Mr Ruchir Bhatia, Sr.
Standing Counsel.

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. 23003/2023

1. Allowed, subject to just exceptions.

W.P.(C) 5856/2023 and CM APPL. 23002/2023 *[Application filed on
behalf of the petitioner seeking interim relief]*

2. This writ petition concerns Assessment Year (AY) 2016-17.

3. Via this writ petition, the petitioner has assailed notice dated
17.02.2023 issued under Section 148A(b) of the Income Tax Act, 1961 [in
short, "the Act"].

3.1 Besides this, challenge is also laid to the order dated 30.03.2023
passed under Section 148A(d) of the Act. In addition, thereto, the petitioner
has challenged the consequential notice dated 30.03.2023 issued under

Section 148 of the Act.

4. The principal grievance of the petitioner is that the Assessing Officer (AO) has failed to appreciate the reply submitted by the petitioner, in response to the notice issued under Section 148A(b) of the Act, with regard to the facts adverted to therein.

4.1 In this regard, our attention is drawn to Annexure-13, which is appended on page 72 of the case file.

5. Briefly, it is the petitioner's case that he, along with two other persons, was a partner in a firm going by the name M/s Forde International [hereafter referred to as "firm"]. The firm, it is averred, was allocated the following PAN: "AAAFF9733D".

5.1 It is also the petitioner's case that the firm was dissolved on 28.10.2013. The petitioner claims that the firm was converted into a proprietorship concern. The proprietorship concern was allocated the following PAN: "AAAPW8024G".

6. The petitioner asserts that the Importer-Exporter Code (IEC), was also issued to the proprietorship concern by the concerned authority.

7. Counsel for the petitioner says that the relevant supporting documents, which included the dissolution deed dated 28.10.2013, the certificate of IEC, the balance sheet concerning AY 2016-17, the Income Tax Return (ITR) dated 30.09.2016 for the AY in issue i.e., AY 2016-17 and the assessment order dated 15.03.2022 passed *qua* AY 2015-16 were submitted by the petitioner.

8. Besides this, the order dated 23.08.2022 passed under Section 271(1)(b) of the Act concerning AY 2015-16 was also submitted. [See Annexure-11 appended on page 68].

8.1 In particular, Mr Prashant Kanha, who appears on behalf of the petitioner/assessee draws our attention to the following paragraphs of the order dated 23.08.2022:

“The reply of the assessee has been examined. On examination of dissolution deed it is found that the partnership firm was dissolved on 28.10.2013 and it was converted into proprietorship entity with different PAN and different address. The same has been verified from ITR of the assessee.

In view of the facts and circumstances as discussed above, it is apparent that assessee did not avoid compliance of statutory notices deliberately & it was with reasonable cause within meaning of section 271(1)(b) of the Act. Therefore the penalty u/s 271(1)(b) of the I.T. Act is hereby dropped.”

9. Mr Prashant Kanha, who appears on behalf of the petitioner/assessee, says that, as would be evident on plain reading of the order dated 23.08.2022, the penalty proceedings initiated against the petitioner were dropped in view of the explanation given by the petitioner.

9.1 Mr Kanha says that these aspects have not been analysed in its correct perspective by the AO while passing the impugned order dated 30.03.2023 under Section 148A(d) of the Act.

10. Mr Pratyaksh Gupta, learned standing counsel, who appears on behalf of the respondents/revenue, says that the petitioner/assessee did not surrender the PAN concerning the firm, and therefore, reassessment proceedings were triggered qua him.

11. *Prima facie*, in our view, even if this is considered to be an infraction, what the AO was required to apply his mind was whether the taxable income, if any, earned, had been brought to tax in the hand of one or the other legal entities i.e., the firm or the proprietorship concern; There was

enough and more material placed before the AO to establish this fact.

12. Therefore, in our view, the AO should revisit the issue, and in this regard, also offer a personal hearing to the petitioner and/or his authorised representative.

13. Accordingly, the impugned order dated 30.03.2023 passed under Section 148A(d) of the Act is set aside.

13.1 The consequent notice of even date i.e., 30.03.2023 is also set aside.

13.2 The AO will be at liberty to pass a fresh order *albeit*, after affording opportunity of hearing to the petitioner and/or his authorised representative, as indicated above.

13.3 In case a need arises to seek further response/documents from the petitioner, adequate opportunity, in that behalf, will be granted by the AO.

13.4 Needless to state, the AO will pass a speaking order, which will deal with all factual and legal submissions advanced by the petitioner and/or his authorized representative.

14. The writ petition is disposed of in the aforesaid terms. Pending application shall stand closed.

15. Parties will act based on the digitally signed copies of the order.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

MAY 8, 2023 / tr