



\$~113

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

%

Date of Decision: 08.05.2023

+ **W.P.(C) 5865/2023**

MOVISH REALTECH PRIVATE LIMITED Petitioner
Through: Mr Piyush Kumar Kamal, Advocate.

versus

DEPUTY COMMISSIONER OF INCOME TAX Respondent
Through: Mr Gaurav Gupta, 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.23013/2023

1. Allowed, subject to just exceptions.

W.P.(C) 5865/2023 & CM Appl.23012/2023 *[Application filed on behalf of the petitioner seeking interim relief]*

2. Issue notice.

2.1 Mr Gaurav Gupta, learned senior standing counsel, accepts notice on behalf of respondent/revenue.



3. In view of the order that we propose to pass, Mr Gupta says that a counter-affidavit need not be filed and he will argue the matter based on the record presently available to the court. Therefore, with the consent of the counsels for the parties, the writ petition is taken up final hearing and disposal, at this stage itself.

4. This writ petition concerns Assessment Year (AY) 2019-20.

5. The petitioner has laid a challenge to the order dated 22.03.2023 passed under Section 148A(d) of the Income Tax Act, 1961 [in short, "Act"]. Besides this, a challenge is also laid to the consequential notice of even date i.e., 22.03.2023 issued under Section 148 of the Act.

6. The principal allegation against the petitioner is that it is a beneficiary of an accommodation entry provided in the form of bogus loans, amounting to Rs. 35,18,52,491/- during the period in issue i.e., Financial Year (FY) 2018-19 [Assessment Year (AY) 2019-20].

6.1 It is alleged by the respondent/revenue that the bogus accommodation entry was provided by Aneri Fincap Ltd. [in short, "AFL"].

6.2 It is also asserted by the respondent/revenue that AFL is one of several entities controlled by an accommodation entry provider i.e., one, Mr Rajesh G Mehta.

6.4 The record shows that these allegations are, broadly, founded on the statement dated 08.11.2019 made by Rajesh G Mehta under Section 131 of the Act. [See typed copy of the statement appended on page 58 of the case file].

7. Counsel for the petitioner says that a bare perusal of the statement made by Mr Rajesh G Mehta would show that there is no reference to any



accommodation entry being provided to the petitioner, as alleged, in the form of a bogus loan.

8. It is relevant to note that the petitioner earlier went by the name Ashiana Realtech Pvt. Ltd.

9. We may note that the petitioner does concede that it had received an unsecured loan from AFL. Furthermore, the petitioner does not dispute the amount which has been quantified by the AO.

10. That said, the petitioner's stand is that the loan is genuine. In this regard, the petitioner avers that the loan was repaid in the succeeding AY i.e., AY 2020-21.

10.1 In support of its plea that the loan is genuine, the petitioner adverts to the fact (something which has been noted in the order passed under Section 148A(d) of the Act) that the interest was paid and tax at source was deducted under Section 194A of the Act.

10.2 Counsel for the petitioner also emphasized the point that, although an opportunity was sought for personal hearing, the same was not provided by the AO. It is the submission of the counsel for the petitioner that the AO was obliged to grant personal hearing to the petitioner's authorized representative.

10.3 In this behalf, counsel for the petitioner has relied upon the circulars issued by the CBDT dated 01.08.2022 and 22.08.2022.

11. On the other hand, Mr Gaurav Gupta, learned senior standing counsel, who appears on behalf of the respondent/revenue, has taken the position that since AFL was a paper company, the petitioner could not have, possibly, entered into any genuine loan transaction.



11.1 It is also Mr Gupta's contention that the petitioner did not place on record any loan agreement pursuant to which, possibly, the loan was given, as asserted by it.

12. We have heard the counsels for the parties.

13. What emerges from the record, presently, available before the court is that the reassessment proceedings were triggered against the petitioner pursuant to a search and seizure action initiated under Section 132 of the Act against "Oneworld group entities". This action was taken on 06.11.2019.

13.2. It is in the course of proceedings carried out thereafter that the statement of Mr Rajesh G Mehta was recorded under Section 131 of the Act.

13.2 It is based on the statement of Mr Rajesh G Mehta that, apart from other entities and persons, the respondent/revenue zeroed down on AFL, which, supposedly, lent money to the petitioner.

14. The moot point which arose for consideration before the AO was whether he had material available with him to form a reasonable belief that income chargeable to tax had escaped assessment.

15. Based on the record made available to the court at this stage, as alluded to hereinabove, the foundation for triggering reassessment proceedings *qua* the petitioner is the statement of Rajesh G Mehta.

15.1 The statement, by itself, does not lend any clarity as to whether the AO had underlying material available with him for reaching a conclusion that income chargeable to tax *qua* the petitioner had escaped assessment.

15.2 This aspect would have, perhaps, become clear if the AO had accorded personal hearing to the authorized representative of the petitioner.



16. It is required to be noticed that, as adverted to hereinabove, the search and seizure action under Section 132 of the Act was not carried out against the petitioner; such action was carried out against a third party.

16.1 Furthermore, the period in issue, as noted right at the outset, is FY 2018-19 [AY 2019-20].

17. There seems to be weight in the submission made on behalf of the petitioner that the CBDT via the aforementioned circular i.e., circular dated 01.08.2022 and 22.08.2022 has relaxed the rigour of the law.

17.1 It appears that the CBDT has read into the provisions of 148A and Section 148 of the Act, the principles of natural justice.

18. Therefore, we are of the view that the best way forward would be to set aside the order dated 22.03.2022 passed under Section 148A(d) of the Act and consequential notice of even date i.e., 22.03.2022 issued under Section 148 of the Act.

18.1 It is ordered accordingly.

19. The AO will, however, be at liberty to pass a fresh order after according personal hearing to the authorized representative of the petitioner.

19.1 The AO will also furnish the material, if any, which is in his possession, but not provided, which, according to him, would trigger the reassessment proceeding against the petitioner.

19.2 In case fresh material/information is furnished to the petitioner, the petitioner will be given an opportunity to respond to the same. For this purpose, a reasonable timeframe will be fixed by the AO.

19.3 Needless to add, the AO will pass a speaking order; a copy of which will be furnished to the petitioner.



20. The writ petition is disposed of, in the aforesaid terms.
21. Consequently, the pending application shall stand closed.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

MAY 8, 2023/pmc

