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

% *Date of decision: 15.05.2023*

+ **W.P.(C) 6263/2023 & CM APPL. 24604/2023**

DATA RAM SONS PVT LTD Petitioner

Through: Mr Rohit Jain, Advocate

versus

ASSISTANT COMMISSIONER OF INCOME TAX & ORS.

..... Respondents

Through: Mr Ruchir Bhatia, Senior
Standing counsel with Shri
Pratyakash Gupta, Advocate

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. 24605/2023

1. Allowed, subject to the petitioner filing legible copies of the annexures.

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2. Issue notice.

3. Mr Ruchir Bhatia, learned senior standing counsel, who appears on behalf of the respondents/revenue, accepts notice.

3.1 In view of the directions that we propose to issue, Mr. Bhatia says that he does not wish to file a counter-affidavit in the matter, and he will argue the matter, based on the record presently available to the court.

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

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

6. This writ petition is directed against order dated 30.07.2022 passed under Section 148A(d) of the Income Tax Act, 1961 [in short, "Act"]. Besides this, challenge is also laid to the consequential notice dated 31.07.2022 issued under Section 148 of the Act.

6.1 In addition, the petitioner has also assailed the notice dated 07.06.2021 issued under Section 148 of the Act and the intimation letter dated 23.05.2022 which is, in effect, a notice issued under Section 148A(b) of the Act.

7. Mr Rohit Jain, learned counsel who appears on behalf of the petitioner, makes two broad submissions in support of the petitioner's case.

(i) First, the notice dated 23.05.2022 issued under Section 148A(b) of the Act is unsustainable in law. According to Mr Jain, in the said notice, there is a reference to the decision of the Supreme Court rendered in *Union of India vs Ashish Aggarwal, (2022) 444 ITR 1 (SC)*. It is Mr Jain's contention that limitation for the Assessment Year (AY) in issue, i.e., AY 2019-20, would have expired, at the relevant time, only on 31.03.2023. Therefore, the respondents/revenue could not have taken recourse to the leeway granted *via* the aforementioned decision rendered by the Supreme Court.

(ii) Second, the genesis of the reassessment triggered against the



petitioner is a survey which was conducted on 22.12.2020 *qua* the petitioner and “other persons”. It is contended that because of this survey, reassessment proceedings were triggered for AYs 2013-14 to 2017-18.

8. Mr Jain says that a perusal of the record concerning AYs 2013-14 to AY 2017-18 would show that the reasons which propelled the Assessing Officer (AO) to initiate proceedings under Section 147-148 of the Act, were no different from those which have triggered reassessment proceedings for AY 2019-20.

9. As a matter of fact, Mr Jain says that the regular assessment carried out in AY 2018-19, and scrutiny assessment carried out in AY 2020-21, also dealt with the issues which are subject matter of the AY with which the instant writ petition is concerned, i.e., 2019-20.

10. In sum, it is Mr Jain’s contention that these aspects, which were put to the AO by the petitioner in his communication dated 13.06.2022, have not been considered by the AO while passing the order dated 30.07.2022, under Section 148A(d) of the Act.

11. Mr. Bhatia says, insofar as the first contention advanced by Mr Jain is concerned, that the same is unsustainable in law. It is Mr Bhatia’s say since limitation had not expired at the relevant point in time, notice dated 23.05.2022 issued under Section 148A(b) of the Act is sustainable, notwithstanding reference, as contended by the Mr Jain, to the judgment of the Supreme Court in *Ashish Aggarwal’s* case.

12. Insofar as the other aspect is concerned, Mr Bhatia says that



since an assessment order has not been passed for AY 2019-20, the AO could consider the record of the earlier AYs, and the reasons for dropping those proceedings, to which Mr. Jain has made a reference.

13. We have heard learned counsel for the parties. We are in agreement with Mr. Bhatia that the notice dated 23.05.2022 issued under Section 148A(b) of the Act cannot be declared as being untenable in law, since even according to Mr. Jain, the limitation *qua* AY 2019-20 would have expired only on 31.03.2023.

14. Merely because there is a reference to the judgment of Supreme Court in *Ashish Aggarwal's* case, which according to Mr Jain would not apply *qua* the AY in issue, it would not render the notice untenable, as it is the common case of counsel for parties that after 01.04.2021, notices could have been issued only under the new regime.

15. Mr Jain cannot but accept that the notice dated 23.05.2022 has been issued under the new regime, i.e., under Section 148A(b) of the Act.

16. However, Mr Jain's argument carries weight insofar as the second aspect is concerned, i.e., that since proceedings on the very same aspects have been dropped in other AYs, that aspect required attention of the AO.

17. Since according to Mr Jain, assessment order has not been passed, it would be best, if the AO were to advert to the record concerning the earlier AYs before passing the assessment order. It is ordered accordingly.



18. We are conscious of the fact that the rule of *res-judicata* does not apply, i.e., that each AY is different. That said, if the reasons for reopening are consistently similar or the same, the AO needs to apply the principle of consistency, before passing the assessment order.[See ***Radhasaomi Satsang v CIT*** (1992) 193 ITR 321 (SC)]

19. The AO will, thus , accord personal hearing to the authorized representative of the petitioner before he proceeds further.

20. For this purpose, the AO will issue a notice to the petitioner, which would indicate the date and time of the hearing. Needless to add, the AO will pass a speaking assessment order, wherein the aforementioned aspect would be dealt with, i.e., the assertion that assessments have been completed for the AYs 2018-19 and 2020-21, involving aspects which are subject matter of the AY in issue.

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

21.1 Consequently, the pending application shall stand closed.

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

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

MAY 15, 2023/as

Click here to check corrigendum, if any

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