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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 18.05.2023

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W.P.(C) 6514/2023**KOPAL BAKSHI**

..... Petitioner

Through: Ms Rashi Jain, Advocate.

versus

PR COMMISSIONER OF INCOME TAX 10 & ANR.

..... Respondents

Through: Mr Abhishek Maratha, Sr. Standing Counsel with Mr Akshat Singh, Advocate for respondent/ revenue.

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. 25592/2023**

1. Allowed, subject to just exceptions.

W.P.(C) 6514/2023 & CM APPL. 25591/2023 [Application filed on behalf of the petitioner seeking interim relief]

2. Issue notice.

2.1 Mr Abhishek Maratha, senior standing counsel who appears on behalf of the respondent/ revenue, accepts notice.

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

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

5. This petition is directed against the assessment order dated 19.04.2023 passed under Section 148A(d) of the Income Tax Act, 1961 [in short, "Act"].

5.1 Besides this, challenge is also laid to the consequential notice dated 19.04.23, issued under Section 148 of the Act.

6. The principal ground on which aforementioned order and notice is challenged is that there has been a breach of principles of natural justice.

7. The record shows that the petitioner was issued a notice under Section 148A(b) of the Act on 31.03.2023.



8. The petitioner had filed a reply to the same, which is dated 07.04.2023. By way of this reply, the petitioner sought details with regard to subject properties *qua* which, according to the respondent/ revenue, the petitioner had received rent, amounting to Rs. 29,45,600/-.

8.1 It is required to be noticed that these details were sought by petitioner in the context of the allegation levelled against her in the aforementioned notice dated 31.03.2023.

9. It appears that survey was conducted *vis-a-vis* the petitioner on 28.01.2020. Apparently, in the course of the survey, the petitioner had admitted that she was the owner of twelve immovable properties, whereas during the period in issue, i.e., F.Y. 2018-19 relevant to AY 2019-20, she had declared rental income only *vis-a-vis* two properties.

9.1 In this context, the respondent/ revenue had alleged that rental receipts, amounting to Rs. 29,45,600/- *qua* the ten properties, which were not disclosed, had escaped assessment.

10. Since the petitioner, as noted above, had asked for details *via* her reply dated 07.04.2023, these were furnished by the respondent/revenue *via* the second notice dated 11.04.2023 under Section 148A(b) of the Act. This notice contained the computation of “notional rental value”, which was pegged at Rs. 29,45,600/-.

11. The petitioner, thereafter, *via* reply dated 14.04.2023, sought a short accommodation to place on record her calculation of fair market rental value concerning the subject properties.

12. It is in this background that the respondent/ revenue issued a third notice dated 17.04.2023 under Section 148A(b) of the Act. *Via* this notice, the petitioner was called upon to file a reply, along with certified documents on or before 14:00 hours (by 2 P.M.) on 18.04.2023.

13. Petitioner claims that a reply was filed on 18.04.2023 at 01:15 P.M. In this context, our attention has been drawn to Annexure-11 of the case file.

14. It appears that while passing the impugned order, the Assessing Officer (AO) did not pay heed to the reply filed by the petitioner on 18.04.2023. This is evident upon perusal of paragraph 6 of the impugned order, which is extracted below:



“6. On the request of the assessee and in accordance to the principles of natural justice, a last and final adjournment granted to the assessee vide notice under section 148A(b) of the IT Act, 1961 dated 17.04.2023 for compliance by 18.04.2023 at 02.00 PM. In response to which, no reply or response has been received from the assessee.”

[Emphasis is ours]

14.1 A perusal of Annexure-12 does indicate that the petitioner did file some documents in support of her case.

15. Ms Rashi Jain, learned counsel who appears on behalf of the petitioner, says that given the aforesaid position, the impugned order should be set aside with a direction to the AO to conduct *de novo* proceedings.

16. On the other hand, Mr Maratha says that given the fact that several opportunities had been granted to the petitioner, the impugned order does not call for any interference.

17. Having regard to the facts and circumstances set forth hereinabove, we are of the opinion that although notices have been issued prior to the notice dated 17.04.2023, the AO, having regard to the allegation made and other facets obtaining in the matter, had granted a very narrow window to the petitioner for placing on record the documents in support of her stand.

18. As noted above, the alleged escapement of income is based on notional rent. Perhaps, for this reason, that the petitioner sought time to place on record the market rent in support of her case and other related documents.

19. Based on the record available to us, the petitioner had met the deadline that was fixed in the notice dated 17.04.2023.

20. Therefore, according to us the best way forward would be to set aside the impugned order, with liberty to the AO to carry out a *de novo* exercise.

20.1 It is ordered accordingly.

21. The impugned order 19.04.2023 passed under Section 148A(d) and the consequential notice of even date, i.e., 19.04.2023 issued under Section 148 are set aside.

21.1 Liberty is however given to AO to pass a fresh order, *albeit* after hearing the petitioner and/or her authorised representative.

21.2 Needless to say, the AO will pass a speaking order and while doing so, consider



the material placed on record and submissions advanced by the petitioner and/or her authorised representative, in support of her case.

22. It is clarified that observations made hereinabove will not impact merits of the case.
23. The petition is disposed of, in the aforesaid terms.
- 23.1 Pending application stand closed.
24. Parties will act based on the digitally signed copy of the order.

(RAJIV SHAKDHER)
JUDGE

(GIRISH KATHPALIA)
JUDGE

MAY 18, 2023/v

[Click here to check corrigendum, if any](#)