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

% ***Decision delivered on: 22.05.2023***

\+ **W.P.(C) 6901/2023 & CM Nos.26898-99/2023**

OM PARKASH ..... Petitioner

Through: Mr Sultan Singh Khatri, Adv.

versus

INCOME TAX OFFICER WARD 68(5) DELHI ..... Respondent

Through: Mr Aseem Chawla, Sr Standing Counsel 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):

CM No.26899/2023

1. Allowed, subject to just exceptions.

W.P.(C) 6901/2023& CM No.26898/2023*[Application filed on behalf of the petitioner seeking interim relief]*

2. Issue notice.

2.1 Mr Aseem Chawla, learned senior standing counsel, accepts notice on behalf of the respondent/revenue.

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

3.1 Therefore, with the consent of learned counsel for the parties, the matter is taken up for hearing and final disposal, at this stage itself.

4. This writ petition concerns Assessment Year (AY) 2014-15.

5. This is the second round of litigation in this Court for the petitioner. The petitioner had, in the first round, filed a writ action i.e., W.P.(C) No.13119/2022, which was withdrawn with liberty to urge all contentions and submissions before the Assessing Officer (AO). The said order was passed on 09.09.2022.

6. Pursuant to the aforesaid circumstance, an assessment order dated 29.03.2023 has been passed.

7. Mr Sultan Singh Khatri, who appears on behalf of the petitioner, says that there are several flaws in the impugned assessment order, which has been passed under Section 143(3) read with Section 147 of the Income Tax Act, 1961 [in short, "Act"].

7.1 According to Mr Khatri, *inter alia,* the assessment order is impregnated with the following errors:

(i) First, no notice under Section 143(2) of the Act was issued prior to passing the assessment order.

(ii) Second, the entire sale consideration on account of sale of agricultural land has been assessed to tax. There has been no adjustment for cost of acquisition.

(iii) Third, the benefit of Section 54B of the Act has not been granted.

8. Mr Chawla submits, that the petitioner did not furnish relevant details to the AO, to establish that the subject land was rural agricultural land.

9. Mr Chawla, however, cannot but accept, that the entire sale consideration could not have been brought to tax.

9.1 It is Mr Chawla's contention, that these aspects can be sorted out in an appeal, which the petitioner can take recourse to.

10. The record shows, that the present proceedings involve an element of both fact and law, which may require some examination qua facts, in particular, by the appellate authority. However, the fact that the cost of acquisition has been taken as 'nil' is an aspect which may require intercession by the AO, while ascertaining as to whether stay qua demand should be granted.

10.1 Therefore, the instant writ petition is disposed of with the following directions:

(i) The petitioner is granted six (6)weeks to prefer an appeal with the Commissioner of Income Tax (Appeals) [in short, "CIT(A)"].

(ii) In the interregnum, no precipitate action will be taken against the petitioner.

(iii) The petitioner will file an application for stay with the concerned authority, within ten [10] days from today.

(iv) The concerned officer will dispose of the application for stay within ten [10] days of the same being filed. The AO will *inter alia,* bear in mind, the broad contentions raised before us, and in particular, the aspect that the entire sale consideration has been brought to tax.

11. Needless to add, if the petitioner is aggrieved by the outcome in the application for stay, he would have liberty to take recourse to an appropriate remedy, *albeit*, as per law.

12. The writ petition is disposed of in the aforesaid terms.

13. Consequently, pending application shall stand closed.

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

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

MAY 22, 2023
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Click here to check corrigendum, if any