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

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Decision delivered on: 22.05.2023

+ **W.P.(C) 6914/2023**

SANJAY AGGARWAL

..... Petitioner

Through: Mr Dinesh Mohan Sinha and Mr
Rajeev Kumar Sharma, Advs.

versus

INCOME TAX OFFICER AND ORS.

..... Respondents

Through: Mr Kunal Sharma, 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):

1. Issue notice.
- 1.1 Mr Kunal Sharma, learned senior standing counsel, accepts notice on behalf of the respondents/revenue.
2. Given the direction that we propose to issue, Mr Sharma says, that counter-affidavit need not be filed, and that he will argue the matter based on the record presently available with the Court.
- 2.1 Therefore, with the consent of learned counsel for the parties, the matter is taken up for hearing and final disposal, at this stage itself.
3. This writ petition concerns Assessment Year (AY) 2009-10.
4. The petitioner/assessee has assailed the order dated 26.12.2022 passed by the Income Tax Appellate Tribunal [in short, "Tribunal"].



5. Before the Tribunal, the petitioner/assessee had assailed the order of the Commissioner of Income Tax (Appeals) [in short, "CIT(A)"] dated 29.12.2017.

6. A perusal of the order dated 29.12.2017 passed by the CIT(A) would show, that before him, the petitioner/assessee had preferred an appeal against the order dated 18.03.2014 passed under Section 271(1)(c) of the Income Tax Act, 1961 [in short, "Act"] concerning the AY in issue.

7. Via order dated 18.03.2014, the Assessing Officer (AO) had levied, on the petitioner, penalty amounting to Rs.27,34,356/-.

8. Notably, before the CIT(A), there was no representation, either on behalf of the petitioner/assessee or the respondents/revenue.

9. The petitioner avers, that the quantum levy imposed on the petitioner *via* assessment order dated 29.12.2011 was set aside by the Tribunal in the earlier round.

10. It is claimed, that the matter was remanded to the AO. Furthermore, the petitioner avers, that after the remand, the AO passed a fresh order dated 29.06.2021.

10.1 As a result, the petitioner's assessed income was pegged at Rs.3,21,390/-. This order was passed under Section 143(3) read with Section 254 of the Act.

10.2 Furthermore, the AO has also directed levy of interest under Section 234A, 234B and 234C of the Act.

10.3 In addition thereto, penalty proceedings under Section 271(1)(c) of the Act have also been directed to be initiated.



11. Insofar as the earlier assessment order dated 29.12.2011 was concerned, the AO had made an addition, with respect to unconfirmed sundry creditors to the extent of Rs.91,82,261/-. The petitioner's assessed income was pegged at Rs.95,06,940/-.

12. As would be evident, the CIT(A)'s order dated 29.12.2017, which was set aside by the Tribunal *via* impugned order dated 26.12.2022 arose out of the earlier penalty order dated 18.03.2014, which in turn was founded on the assessment order dated 29.12.2011.

13. It is the contention of Mr Dinesh Mohan Sinha, who appears on behalf of the petitioner, that the Tribunal should not have remanded the matter, as the assessment order dated 29.12.2011 was no longer in existence.

14. Mr Sinha says, that pursuant to the assessment order dated 29.06.2021, up until now, no penalty proceedings have been triggered against the petitioner, although initiation of penalty proceedings were directed *via* the said order.

15. Given these circumstances, the impugned order is set aside. Consequently, the order dated 18.03.2014 qua penalty proceedings will collapse.

16. It is, however, made clear that if penalty proceedings are taken out, pursuant to the assessment order dated 29.06.2021, the order passed by us today will not impact the same.

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



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

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

MAY 22, 2023/aj

