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

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Decision delivered on: 23.05.2023

+ **W.P.(C) 7049/2023 & CM Nos.27419-20/2023**

SMS INDIA (P) LTD.

..... Petitioner

Through: Mr Rajan Bhatia, Adv.

versus

ASSISTANT COMMISSIONER OF INCOME

TAX, CIRCLE INT. TAX 3(1)(2), NEW DELHI Respondent

Through: Mr Aseem Chawla, Sr Standing
Counsel with Ms Pratishtha
Chaudhary, Adv.

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.27420/2023

1. Allowed, subject to just exceptions.

W.P.(C) 7049/2023 & CM No.27419/2023 *[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. Given the directions that we propose to issue, Mr Chawla says that
counter-affidavit need not be filed, and 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) 2019-20.

5. This writ petition seeks to challenge notice dated 23.03.2023 issued under Section 148A(b) of the Income Tax Act, 1961 [in short, "Act"].

5.1 Besides this, challenge is also laid to the order dated 24.04.2023 passed under Section 148A(d) of the Act.

5.2 In addition thereto, the petitioner has assailed the consequential notice of even date, i.e., 24.04.2023, issued under Section 148 of the Act.

6. Mr Rajan Bhatia, who appears on behalf of the petitioner, says that the income said to have been escaped assessment was never accrued to the petitioner.

7. A perusal of the record shows that, according to the respondent/revenue, the petitioner had received, during the relevant period, rent on plant and machinery from an entity going by the name Gannon Dunkerley & Co. Ltd.

7.1 The amount crystallized by the respondent/revenue in this regard is Rs.32,65,403/-.

8. Mr Bhatia says that this amount neither accrued, nor was received, by the petitioner. In this regard, reliance is placed on the certificate issued by an entity going by the name, Gannon Dunkerley & Co. Ltd.

8.1 The relevant part of the certificate reads as follows :

"TO WHOM IT MAY CONCERN

It is certified/confirmed that an amount of INR 32,65,403/- & TDS 65,308/- reflecting in the 26AS of Financial Year 2018-19, under PAN-AAACII682F of SMS Iron Technology Pvt. Ltd. This amount is neither related to SMS Iron Technology Pvt. Ltd. (PAN-AAACII682F) nor to SMS India Pvt. Ltd. (PAN-AABCS8348B).

Inadvertently wrong PAN AAACII682F mentioned while filling & filing our TDS return for the F.Y 2018-19 instead of correct one.



We also assure to SMS Iron Technology Pvt. Ltd. that we/our concerned staff has start working on this issue and will revise the return as earliest.”

9. Furthermore, Mr Bhatia says that the proceeding is flawed, as the notice issued under Section 148A(b) and the order passed under Section 148A(d) of the Act, are directed towards a company which is no longer in existence.

10. It is stated that SMS Iron Technology (P) Ltd. merged with the petitioner company pursuant to a scheme sanctioned by the NCLT *via* order dated 01.04.2016.

11. Having regard to the aforesaid position, in our view, this is a matter where the Assessing Officer (AO) could have verified the exact position by issuing notice to Gannon Dunkerley & Co. Ltd.

12. Therefore, we are inclined to set aside the impugned order passed under Section 148A(d), and the consequential notice issued under Section 148 of the Act.

13. The matter is remitted to the AO for reexamination.

13.1 The AO will be at liberty to seek information from Gannon Dunkerley & Co. Ltd., in line with the certificate issued by them, which is appended on page 136 of the case file and is marked as Annexure P-4.

14. The AO, before reexamining the case, will issue notice to the authorized representative of the petitioner, setting forth therein the date and time of hearing.

15. The AO will also grant an opportunity to the petitioner of hearing through its authorized representative.

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



17. The writ petition is disposed of, in the aforesaid terms.
18. Consequently, the pending application shall stand closed.
19. Parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

MAY 23, 2023

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