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

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Date of Decision: 24.08.2023

+ **W.P.(C) 7187/2023 & CM APPL. 27973/2023**

SRIVENKATESHWAR TRADEX PRIVATE LIMITED THROUGH ITS
DIRECTOR, RAHUL SOLANKI Petitioner

Through: Mr A.K. Babbar with Mr Surinder Kumar, Advs.
versus

PRINCIPAL COMMISSIONER OF INCOME TAX,
PCIT 7 & ANR.

..... Respondents

Through: Mr Ruchir Bhatia, Sr Standing Counsel with Ms
Deeksha Gupta, 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)

1. Issue notice.

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

2. Given the directions that we propose to pass, Mr Bhatia says that no counter-affidavit is required to be filed in the matter and he will rely on the record presently available with the court.

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

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



4. The record shows that the petitioner was issued a notice dated 05.03.2023 under Section 148A(b) of the Income Tax Act, 1961 [in short, “1961 Act”], with regard to the bogus purchases allegedly made by it from two suppliers i.e., Jatalia Global Ventures Ltd. [in short, “JGVL”] and RCI Industries & Technologies Ltd. [in short, “RCI”].

4.1 The value of the bogus purchases *qua* each of these suppliers was placed at Rs.21,00,24,258/-. The cumulative value of the transactions with these two entities was, thus, pegged at Rs.49,40,45,269/-.

4.2 It appears that as per the said notice, the petitioner was required to file its response on or before 13.03.2023.

5. The record shows that on 13.03.2023, based on the request of the petitioner, an extension was granted, and accordingly, the petitioner was called upon to file its response on or before 16.03.2023.

6. It appears that, thereafter, another notice dated 27.03.2023 was issued to the petitioner under Section 148A(b) of the 1961 Act, whereby the petitioner was called upon to respond to the allegations contained therein, *albeit*, on or before 29.03.2023.

6.1 Apart from the fact that the time granted for filing the response was short, the allegations made against the petitioner were different from that which were subject matter of the earlier notice dated 05.03.2023.

6.2 This time around, the allegation levelled against the petitioner was that it had entered into a transaction with an entity going by the name Reema Polychem Private Limited [in short, “RPPL”].

6.3 The respondent/revenue, insofar as this entity was concerned, placed the value of the transaction of Rs.2,79,09,300/-.



7. It is not in dispute that the petitioner had filed responses to both notices issued under Section 148A(b) of the 1961 Act. These responses are dated 16.03.2023 and 30.03.2023.

8. The Assessing Officer (AO), however, was not persuaded by the responses furnished on behalf of the petitioner and, thus, proceeded to pass the impugned order dated 31.03.2023 under Section 148A(d) of the Act.

9. Mr A.K. Babbar, who appears on behalf of the petitioner, says that the reassessment proceedings have been triggered pursuant to show-cause notices issued under Sections 74 and 132 of the Central Goods and Services Tax Act, 2017 [in short, “CGST Act”], read with the corresponding provisions of the State Goods and Services Tax Act, 2017 [in short, “SGST Act”] as also the Integrated Goods and Services Tax Act, 2017 [in short, “IGST Act”].

9.1 It is Mr Babbar’s contention that the adjudication concerning these show-cause notices is pending and therefore, the fact that the proceedings were triggered under the allied statutes, *simpliciter*, could not be taken as information, without due application of mind for triggering reassessment proceedings under the 1961 Act.

10. Besides this, Mr Babbar also submits that insofar as the allegations made against the petitioner with regard to the fictitious purchases made from RPPL was concerned, the AO gave the petitioner barely two (2) days to file a response, which is contrary to the provisions of the 1961 Act.

10.1 It is Mr Babbar’s contention that the timeframe granted did not permit the petitioner to file a more exhaustive and detailed reply to the said show-cause notice.



11. Mr Bhatia, on the other hand, says that no prejudice was caused to the petitioner, since both the replies have been considered in the impugned order.

11.1 Mr Bhatia, however, cannot but concur that the minimum statutory timeframe provided under the provisions of Section 148A(b) of the 1961 Act for filing the response is seven (7) days, which, in this case, was clearly not provided to the petitioner.

12. Therefore, we would be entering into an area of uncertainty if we were to accept that in this case, the two (2) days granted to the petitioner *via* the notice dated 27.03.2023 was sufficient.

13. The statute, as indicated above, provides a specific timeframe and therefore, that leeway would have to be granted to the assessee.

14. Having regard to the fact that the responses to notices form part of the impugned order dated 31.03.2023 passed under Section 148A(d) of the 1961 Act, in our view, the best way forward would be to set aside the said order with liberty to the AO to pass a fresh order.

14.1 It is ordered accordingly.

15. Since Mr Babbar has indicated to us that the petitioner would like to file a further reply, accordingly, two(2) weeks are granted to file a comprehensive reply to both notices issued under Section 148A(b) of the Act.

15.1 The AO, upon receipt of the reply, will issue a notice to the petitioner for according personal hearing in the matter. The notice will indicate the date and time of the hearing.

15.2 The AO will, thereafter, proceed to pass a speaking order; a copy of



which will be furnished to the petitioner.

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

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

AUGUST 24, 2023/pmc