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

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Date of decision : 26.05.2023

+ **W.P.(C) 7277/2023**

SAGARIKA GHOSH -LEGAL HEIR OF LATE SH. DIPANKAR
MOHAN GHOSH- THROUGH HER SPA HOLDER UPENDRA
NATH MARWAH Petitioner

Through: Mr Sumit Lalchandani, Advocate.

versus

ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE-
1(3)(1), INTL. TAXN. DELHI AND ANR Respondents

Through: Mr Ruchir Bhatia, Sr. Standing
Counsel with Mr Pratyaksh Gupta, Jr.
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)

CM APPL. 28302/2023

1. Allowed, subject to just exceptions.

W.P.(C) 7277/2023 & CM No. 28301/2023 *[Application filed on behalf of
the petitioner seeking interim relief]*

2. Issue notice.

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

4. Given the directions that we propose to pass, Mr Bhatia says that he
does not wish to file a counter-affidavit in the matter, and he will argue the
matter based on the record presently available with the court.



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

5. Mr Sumit Lalchandani, who appears on behalf of the petitioner/assessee, does not dispute that against two orders dated 23.03.2020 and 30.03.2021 passed under Section 263 of the Income Tax Act, 1961 [in short, “the Act”], appeals have been preferred by the petitioner with the Income Tax Appellate Tribunal (in short, “Tribunal”).

6. We are informed by Mr Lalchandani that the arguments in the said appeals have been heard by the Tribunal, and orders are awaited.

7. Insofar as the instant writ petition is concerned, the petitioner has assailed the draft assessment order dated 12.08.2022 passed under Section 144C(1) of the Act, and the final assessment order dated 28.10.2022 passed under Section 147 read with Section 144C(3) and Section 263 of the Act.

7.1 Besides this, challenge is also laid to the valuation report dated 11.08.2022.

8. We are informed by Mr Lalchandani that the notices issued by the Assessing Officer (AO) did not receive any response as the assessee, i.e., Dipankar Mohan Ghosh, had expired.

9. To be noted, the petitioner is the legal heir of the deceased/assessee, Dipankar Mohan Ghosh.

10. Mr Lalchandani says that it is for this reason that objections before the Dispute Resolution Penal (DRP) were not filed.

10.1 It is in this backdrop, according to Mr Lalchandani, that the only other statutory remedy available to the petitioner *qua* the orders impugned before us, is by way of an appeal before the Commissioner of Income Tax



(Appeals) [in short, “CIT(A)”].

10.2 As is evident, the impugned assessment order, i.e., both the draft and the final order, have their genesis in the aforementioned orders passed under Section 263 of the Act. In essence, the decision in the appeals pending before the Tribunal *qua* the said orders would have an impact on the orders impugned before us.

11. Given the peculiar facts of this case, Mr Bhatia submits that if an appeal is filed against the orders and the report impugned before us with the CIT(A), pending the decision in the appeals lodged before the Tribunal, no coercive action will be taken against the petitioner.

11.1 The statement of Mr Bhatia is taken on record.

12. The writ petition is disposed of with the following directions:

- (i) The petitioner/assessee will lodge an appeal with the CIT(A) within four weeks of receipt of the copy of this judgement.
- (ii) The respondents/revenue will not take any coercive measure against the petitioner, till such time a decision is rendered by the Tribunal in the aforementioned appeals, and for a period of three weeks thereafter.

13. Consequently, pending interlocutory application shall also stand closed.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

MAY 26, 2023 / tr