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

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Date of decision : 25.05.2023

+ **W.P.(C) 7297/2023**

SHUKLA ENTERPRISES PRIVATE LIMITED Petitioner

Through: Mr Sandeep Khurana with Mr Shiven Khurana, Advocates.

versus

ASSISTANT COMMISSIONER OF INCOME TAX- CIRCLE 22(2)
DELHI & ANR. Respondents

Through: Mr Aseem Chawla, Sr. Standing Counsel with Ms Pratishtha Chaudhary and Mr Aditya Gupta, Advocates.

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.28352/2023

1. Allowed, subject to just exceptions.

W.P.(C) 7297/2023 and CM No.28353/2023 *[Application filed on behalf of the petitioner seeking interim relief]*

2. Issue notice.

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

4. Given the direction that we propose to issue, Mr Chawla 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.

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

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

7. Via this writ petition, challenge has been laid to the order dated 07.04.2023 passed under Section 148A(d) of the Income Tax Act, 1961 [in short, "Act"].

7.1 Besides this, challenge is also laid to the consequential notice of even date i.e., 07.04.2023 issued under Section 148 of the Act.

8. The principal allegation levelled against the petitioner is, that it has entered into fictitious transactions worth Rs.15.5 lacs, with an entity going by the name BKR Capital Pvt. Ltd. (in short, "BKR") during Financial Year (FY) 2018-19 (AY 2019-20). This allegation formed part of the notice dated 28.03.2023 issued to the petitioner under Section 148A(b) of the Act. The petitioner filed its reply on 04.04.2023. Via this reply, the petitioner pointed out, that it had not taken any amount from the aforementioned entity, and had in fact repaid the said amount.

9. As a matter of fact, a perusal of the impugned order shows, that the AO has, in fact, accepted this stand of the petitioner, as is evident upon a perusal of paragraph 5(f) of the impugned order. For the sake of convenience, paragraph 5 of the impugned order is extracted hereafter:

*"5. The submissions of the assessee have been considered and are discussed atlength as under:
a. It is clearly mentioned in the insight portal available in this office that M/sShukla Enterprises Pvt. Ltd. has made fictitious transaction of Rs. 15,50,000/-with M/s BKR*



Capital Pvt. Ltd. (controlled by Sh. Bajrang Lal Periwal entry operator) during the year under consideration.

b. The assessee has failed to bring on record any material to rebut the evidences gathered through the enquiries conducted by the department.

c. As far as argument of payments through banking channel is concerned, there are many decisions of Hon'ble High Courts and Hon'ble ITATs to the effect that merely showing that transactions were carried out through Banking channel is not sufficient to prove the genuineness of the transaction in cases with similar facts and circumstances.

d. It has not submitted any document/material or other documentary evidence to substantiate its claim that it has not done any transaction with M/s BKR Capital Pvt. Ltd. (controlled by Sh. Bajrang Lal Periwal entry operator).

e. All the information including statement of Bajrang Lal Periwal were sent to the assessee along with the notice u/s 148A(b). Bajrang Lal Periwal in his statements under oath u/s 132(4) of the Income-tax Act, 1961 has clearly deposed that BKR Capital Pvt. Ltd. was used only for providing accommodation entries.

f. Further, as far as plea of the assessee that this year it has just paid the loan is concerned, it may be mentioned here that as per modus operandi of such entry providers, all the accommodation entries are settled with cash so that the net effect of the transactions becomes zero. In this case also when the assessee paid back its loan to BKR capital, equal amount of cash, after paying due commission would be received back by the assessee during the year itself. So that unaccounted cash has escaped assessment in this case.

Owing to the above detailed discussion, the arguments/pleas taken by the assessee are not found to be acceptable and the arguments are without merits, hence rejected."

10. Counsel for the petitioner has submitted, that the AO has, without any material, assumed that the petitioner would have received the money,



which it paid to BKR in cash.

11. Mr Chawla, learned senior standing counsel, who appears on behalf of the respondents/revenue, says that the best way forward would be to set aside the impugned order, and have the AO pass a fresh order, after furnishing the relevant material in his possession which, as per the allegation made, would establish that it is an accommodation entry.

12. Accordingly, the impugned order and notice are set aside.

13. Liberty is, however, given to the AO to pass a fresh order. However, before the AO proceeds further, he will furnish the relevant material, which would establish, that the petitioner received the money in cash, which it claims was paid to BKR through banking channels, and on which tax at source was deducted.

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

15. Consequently, pending interlocutory application shall stand closed.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

MAY 25, 2023 / tr