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

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Decision delivered on: 26.05.2023

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W.P.(C) 7397/2023 & CM Nos.28775-76/2023

HOME CREDIT INDIA B.V.

..... Petitioner

Through: Mr Sachit Jolly, Ms Disha Jham and
Ms Soumya Singh, Advs.

versus

ASSISTANT COMMISSIONER OF INCOME TAX
CIRCLE 2 1 1, INTERNATIONAL TAXATION
NEW DELHI & ANR.

..... Respondents

Through: Mr Sanjay Kumar, 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):

CM No.28776/2023

1. Allowed, subject to just exceptions.

W.P.(C) 7397/2023 & CM No.28775/2023 *[Application filed on behalf of
the petitioner seeking interim relief]*

2. Issue notice.

2.1 Mr Sanjay Kumar, learned senior standing counsel, accepts notice on
behalf of the respondents/revenue.

3. Given the directions that we propose to issue, Mr Kumar 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.

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. Mr Sachit Jolly, who appears on behalf of the petitioner, has drawn our attention to the notice dated 04.03.2023 issued under Section 148A(b) of the Income Tax Act, 1961 [in short, “Act”].

5.1 It is Mr Jolly’s contention that the notice had been issued without application of mind. In this context, Mr Jolly has broadly made the following submissions:

(i) First, the allegation concerns investment in shares and, as correctly put by him, at this stage, it could not have been said, without material on record, that it would constitute income chargeable to tax, which had escaped assessment.

(ii) Second, the notice seeks a copy of the passport reflecting travel details. Once again, Mr Jolly correctly states that the petitioner, i.e., the notice, is a company, therefore, this information could not have been sought from it.

(iii) Third, the Assessing Officer (AO) also asked for a tax residency certificate and, therefore, it appears he is completely unclear whether he is issuing notice to an individual or a corporate entity.

(iv) Fourth, to a query concerning applicability of Section 50CA , Mr Jolly submits that this provision applies to transfer of shares, and not investment in shares.

6. We have put these aspects to Mr Kumar. Mr Kumar says that the best



way forward would be to remit the matter to the AO, to conduct a *de novo* exercise.

7. We tend to agree with Mr Kumar.
8. Accordingly, the impugned notice and order are set aside.
9. Liberty is, however, given to the AO to recommence the proceeding, if deemed necessary, *albeit*, after gathering the relevant material which would show that income chargeable to tax has escaped assessment *qua* the petitioner.
10. In case, the AO deems it fit to recommence the proceeding, he/she will issue notice to the petitioner.
11. The AO will also, in that event, accord personal hearing to the authorized representative of the petitioner.
12. Needless to add, in such a situation, the AO will pass a speaking order; a copy of which will be furnished to the petitioner.
13. The writ petition is disposed of, in the aforesaid terms.
14. Consequently, the pending application shall stand closed.
15. Parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

MAY 26, 2023

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