2023:DHC:4224-DB

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

% ***<u>Decision delivered on: 30.05.2023</u>***

\+ **<u>W.P.(C) 7627/2023 & CM Nos.29582-83/2023</u>**

PRAEFINIUM INDIA OPPORTUNITIES F LTD..... Petitioner

Through: Mr Afaan Arshad, Mr Vibhore Batwara and Mr Brijesh Ujjainwal, Advs.

versus

DEPUTY COMMISSIONER OF INCOME TAX CIRCLE INTERNATIONAL TAXATION 2 (2) (2) NEW DELHI. Respondent

Through: Mr Vipul Agrawal, Sr Standing Counsel with Mr Gibran Naushad and Ms Sakshi Shairwal, Jr Standing Counsels.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MR. JUSTICE GIRISH KATHPALIA
[Physical Hearing/Hybrid Hearing (as per request)]

<u>RAJIV SHAKDHER, J.</u> (ORAL):

<u>CM No.29583/2023</u>

1. Allowed, subject to just exceptions.

<u>W.P.(C) 7627/2023&CM No.29582/2023</u> ***[Application filed on behalf of the petitioner seeking interim relief]***

2. Issue notice.

2.1 Mr Vipul Agrawal, learned senior standing counsel accepts notice on behalf of the respondent/revenue.

3. Given the direction that we propose to issue, Mr Agrawal says, he does not wish to file a counter-affidavit, andthat 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. The principal allegation against the petitioner is, that its investment in equity shares of a company going by the name Mentor Capital Ltd. amounting to Rs.43,52,34,000/- remains unexplained.

6. Concededly, the petitioner is a company incorporated in the Virgin Islands (British).

7. Admittedly, the petitioner is a "non-filer". The petitioner has asserted, that it is not claiming any tax treaty exemptions.

8. The petitioner also asserts,that no income has accrued or arisen in India. Based on this, the petitioner takes the stand, that it was not required, in law, to file an income tax return.

9. Notwithstanding the aforesaid, the petitioner also asserts, that no information or material was furnished to it, which could provide the basis for the Assessing Officer (AO) to proceed in assessment /reassessment proceedings against it.

10. It appears, that the petitioner had filed a reply dated 24.04.2023 to the notice dated 27.03.2023 issued under Section 148A(b) of the Income Tax Act, 1961 [in short, "Act"].

11. The record discloses, that while passing the order dated 27.04.2023 under Section 148A(d) of the Act, the aforementioned reply of the petitioner was not taken into account.

12. Mr Agarwal says, that this lapse perhaps occurred because the reply was not uploaded on the designated portal.

13. Mr Agarwal, however, says that the record, as presently available, shows that the petitioner had e-mailed its response. Therefore, Mr Agarwal

says that the best way forward would be to direct the AO to consider the reply.

14. We tend to agree with Mr Agarwal's submission.

15. Accordingly, the impugned order dated 27.04.2023 passed under Section 148A(d) of the Act is set aside.

16. The AO is given liberty to pass a fresh order. However, before the AO proceeds further, he/she will furnish the information or material available with her/him which propelled the AO to trigger assessment/reassessment proceedings against the petitioner.

17. This material will be furnished by the AO to the petitioner within two weeks of receipt of a copy of the judgment. The AO will, in such an eventuality, accord time to the petitioner, it chooses to file a response to the information/material it is confronted with.

18. The AO will also accord personal hearing to the authorized representative of the petitioner. For this purpose, the AO will issue a notice to the petitioner, which would indicate the time and date of hearing.

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

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

21. Consequently, the pending application shall stand closed.

22. Parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

MAY 30, 2023/aj