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

% *Decision delivered on: 30.05.2023*

+ **W.P.(C) 7697/2023**

JAIN ENTERPRISES

..... Petitioner

Through: Mr Inder Paul Bansal and Mr Vivek
Bansal, Advocate

versus

INCOME TAX OFFICER, WARD 36(1), DELHI & ORS.

..... 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)]

RAJIV SHAKDHER, J. (ORAL):

W.P.(C) 7674/2023 & CM No.29696/2023 *[Application filed on behalf of the petitioner seeking interim relief]*

1. Issue notice.
2. Mr Vipul Agrawal, learned senior standing counsel who appears on behalf of the respondents/revenue accepts notice.
4. Mr Agrawal says that in view of the order that we propose to pass, he does not wish to file a counter-affidavit in the matter and that 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 of the case at this stage itself.
6. This writ petition concerns Assessment Year (AY) 2019-20.



7. Petitioner seeks to assail order dated 24.03.2023 passed under Section 148A(d) of the Income Tax Act, 1961 [in short, “the Act”]. Besides this, challenge is also laid to the consequential notice of even date i.e. 24.03.2023 issued under Section 148 of the Act.

7.1 In addition, thereto, petitioner has also challenged the show cause notice dated 04.03.2023 issued under Section 148A(b) of the Act issued by respondent no. 1.

8. The short ground on which the counsel for the petitioner seeks to assail the impugned order is that there has been no application of mind. For this purpose, counsel for petitioner has drawn our attention to paragraph 2.1 of the order dated 24.03.2023 wherein *interalia* it has been stated that the assessee had filed the return declaring his income amounting to Rs.56,09,080/-. Furthermore, this paragraph also adverts to the fact that the assessee in the period in issue undertook transaction amounting to Rs.1,14,34,000/-.

9. The observations made in this paragraph are not aligned with the observations made by the Assessing Officer (AO) in paragraph 4 wherein *interalia* it is stated that the petitioner had not filed its return of income.

10. Mr Vipul Agrawal, senior standing counsel, who appears on behalf of the respondents/revenue, points out that this is perhaps an inadvertent error as in the notice issued under Section 148A(b) of the Act there is no such assertion.

11. We may also note that the petitioner concededly did not file a reply to the notice dated 04.03.2023 issued under Section under Section 148A(b) of the Act.

12. Counsel for the petitioner says that the petitioner has an explanation for the transaction that has been flagged in the order dated 24.03.2023 issued under Section 148A(d) of the Act.

13. We may note that the charge levelled against that petitioner is that it has entered into fictitious purchase transaction with an entity going by the name of M/s Krishna Traders and it is this transaction which has been quantified at Rs. 1,14,34,000/-.

14. In our view, the best way forward would be to set aside the impugned order dated 24.03.2023 passed under Section 148A(d) of the Act and allow the AO to pass a fresh



order after giving opportunity to the petitioner to file a reply to the notice dated 04.03.2023 issued under Section 148A(b) of the Act.

15. This direction we are issuing because the error prove to be fatal for both sides if the order is allowed to remain on record given the contradiction between what is stated in paragraph 2.1 and paragraph 4 of the said order.

16. Accordingly, order dated 24.03.2023 issued under Section 148A(d) of the Act is set aside. Resultantly, the consequential notice of even date i.e. 24.03.2023 issued under Section 148 of the Act is also set aside.

17. The petitioner will file its response to the notice dated 04.03.2023 issued under Section 148A(b) of the Act within four weeks of receipt of the copy of the judgment.

18. The AO will thereafter accord personal hearing to the authorized representative of the petitioner. For this purpose, the AO will issue a notice to the petitioner whereby the date and time of hearing will be indicated.

19. Needless to say that the AO will pass speaking order, copy of which will be furnished to the petitioner.

20. Consequently, the pending application shall stand closed.

21. We make it clear that the fact that we have set aside the order dated 24.03.2023 passed under Section 148A(d) of the Act will not impact the merits of the case.

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

(RAJIV SHAKDHER)
JUDGE

(GIRISH KATHPALIA)
JUDGE

MAY 30, 2023

as

Click here to check corrigendum, if any