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

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Date of Decision: 31.05.2023

+ **W.P.(C) 7838/2023**

SISTEMA ASIA FUND PTE LTD Petitioner
Through: Mr Ritesh Bajaj, Adv.

versus

ASSISTANT COMMISSIONER OF INCOME TAX..... Respondent
Through: Mr Sunil Agarwal, Sr Standing
Counsel with Mr Shivansh Pandya
and Mr Utkarsh Tiwari, Advs.

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.30218/2023

1. Allowed, subject to just exceptions.

W.P.(C) 7838/2023 & CM Appl.30217/2023 [*Application filed on behalf of the petitioner seeking interim relief*]

2. Issue notice.

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

3. In view of the directions that we intend to pass, Mr Agarwal says that



no counter-affidavit is required to be filed, and he would argue based on the record presently available with the court.

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

5. The petitioner has assailed, *via* the said writ petition, the order dated 28.04.2023 passed under Section 148A(d) of the Income Tax Act, 1961 [in short, “Act”].

5.1 In addition thereto, a challenge is also laid to the consequential notice of even date, i.e., 28.04.2023 issued under Section 148 of the Act.

5.2 Besides this, the petitioner has also challenged the notice dated 23.03.2023 issued under Section 148A(b) of the Act.

6. Counsel for the petitioner says that the impugned order and consequential notice referred to hereinabove are flawed, as the Assessing Officer (AO) has moved away from the allegation which was made against the petitioner in the notice dated 23.03.2023, issued Section 148A(b) of the Act.

7. A perusal of the said notice shows that it is alleged that income chargeable to tax had escaped assessment, on account of transaction referred to therein. The transaction, which is referred to in the said notice, concerns the purchase of shares by the petitioner, involving a company going by the name, Lendingkart Technologies Pvt. Ltd. [in short, “LTPL”].

8. The amount which is attributed to this transaction is Rs.6,78,86,701/-.

8.1 A perusal of the order dated 28.04.2023 would show that the petitioner’s explanation with regard to the source of investment was accepted. This is evident upon a plain reading of paragraph 5 of the said order. However, what went against the petitioner is that it had not submitted



the following documents: a copy of the share subscription agreement, a copy of the share certificate issued by LTPL and copy of valuation report on the date of purchase of share.

9. The AO, thus, concluded, in our view erroneously, that in the absence of the valuation report, it could not be determined whether shares were purchased at fair market value, as per the provisions of Section 50CA of the Act, or not.

10. Undoubtedly, this aspect of the matter was never put to the petitioner in the notice issued under Section 148A(b) of the Act.

11. Furthermore, since even according to the respondent/revenue, this was a case where an investment was made and not a transaction involving the transfer of shares, facially, the provisions of Section 50CA of the Act, perhaps, were not applicable.

12. Accordingly, in our view, the best way forward would be to set aside the impugned order dated 28.04.2023 passed under Section 148A(d) of the Act.

12.1 It is ordered accordingly.

13. Resultantly, the consequential notice of even date dated 28.04.2023 will collapse.

14. The AO is, however, given liberty to take next steps in the matter, *albeit*, as per law.

15. It is made clear that if the AO wishes to recommence the proceeding, he will conduct an examination on the basis of the allegation embedded in the notice issued under Section 148A(b) of the Act.

16. The writ petition is disposed of, in the aforesaid terms.



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

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

MAY 31, 2023/pmc

