2023:DHC:6572-DB

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

% ***Date of Decision: 01.09.2023***

\+ **W.P.(C) 7857/2023 & CM APPL. 30290/2023**

RAJESH GUPTA ..... Petitioner

Through: Mr Nagesh Behl, Adv.

versus

ITO WARD 35(1) DELHI ..... Respondent

Through: Mr Vipul Agarwal, Sr. Standing Counsel with Mr Dushyant, Adv.

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

RAJIV SHAKDHER, J. (ORAL):

1. We had heard learned counsel for the parties at some length on 31.05.2023, whereupon the following was recorded:

> *"2.This petition concerns Assessment Year (AY) 2017-18.*
> *3. Mr Nagesh Behl, who appears on behalf of the petitioner, says that the impugned assessment order dated 08.05.2023, which has been passed under Section 147 read with Section 144 and Section 144B of the Income Tax Act, 1961 [in short, "Act"] is not preceded by issuance of either a Section 148 notice or a Section 148A(b) notice.*
> *4. Mr Behl says that consequently, the Assessing Officer (AO) did not pass an order under Section 148(d) of the Act.*
> *5. We may note that notice dated 28.07.2022 issued under Section 148 of the Act is on record. [See Annexure P-2, appended on page 39 of the case file].*
> *6. Mr Behl says that the PAN embedded in the notice does not relate to the petitioner. The PAN on the notice reads as follows: "AGHPG4279L".*
> *7. Mr Vipul Agarwal, learned senior standing counsel, who appears on behalf of the respondents/revenue, says that he will return with instructions in the matter.*

8. Accordingly, issue notice.
8.1 Mr Agarwal accepts notice on behalf of the respondents/revenue.
9. In case instructions are received to resist the petition, a counter-affidavit will be filed before the next date of hearing.
10. List the matter on 01.09.2023.
11. In the meanwhile, operation of the impugned assessment order and demand notice shall remain stayed, till further directions of this court.
11.1 Furthermore, the operation of the penalty notice dated 08.05.2023 shall also remain stayed.
12. Parties will act based on the digitally signed copy of the order."

2. Mr Vipul Agarwal, learned senior standing counsel, who appears on behalf of respondent/revenue, submits that the respondent/revenue has filed the affidavit in the matter.

3. Based on the affidavit, Mr Agarwal contends that in this case, notice under Section 148 of the Income Tax Act, 1961 [in short, "Act"] was wrongly issued to the petitioner.

3.1 The notice under Section 148 of the Act had to be issued to the petitioner's namesake.

4. Accordingly, the prayer made in the application is allowed.

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

6. Accordingly, interim order dated 31.05.2023 shall stand vacated.

RAJIV SHAKDHER
JUDGE

GIRISH KATHPALIA
JUDGE

SEPTEMBER 1, 2023/RY

Click here to check corrigendum, if any