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

% *Decision delivered on: 31.05.2023*

+ **W.P.(C) 7904/2023 & CM APPLS. 30514/2023 & 30515/2023**

DARPAN KOHLI & ORS.

..... Petitioner

Through: Mr M Sufian Siddiqui with Mr Rakesh Bhugra, Mr Kumar Satish Shah and Ms Alya Veronica, Advs.

versus

ASSISTANT COMMISSIONER OF INCOME TAX Respondent

Through: Mr Sunil Agarwal, Sr Standing Counsel with Mr Shivansh B. Pandey, Jr Standing Counsel along with Mr Utkarsh Tiwari, Adv.

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. 30515/2023

1. Allowed, subject to just exceptions.

W.P.(C) 7904/2023 and CM APPL. 30514/2023 [Application filed on behalf of the petitioner seeking interim relief]

2. Issue notice.

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

3. Mr Agarwal says that in view 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.



4. 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.
5. This writ petition concerns Assessment Year (AY) 2017-2018.
6. The petitioner seeks to assail notice dated 06.04.2021 issued under Section 148 of the Income Tax Act, 1961, [in short, “the Act”].
- 6.1 Besides this, challenge is also laid to the assessment order dated 09.05.2023.
7. It is not in dispute that the impugned notice dated 06.04.2021 is addressed to one, Mr Kuldeep Kohli.
8. The record discloses that Mr Kuldeep Kohli expired on 22.12.2017.
9. We have on record a certificate which shows that the petitioners before us are the surviving family members of the deceased/assessee, i.e., Mr Kuldeep Kohli’s.
10. Mr M Sufian Siddiqui , learned counsel for the petitioners, says that the revenue was aware of the fact that Mr Kuldeep Kohli had expired.
11. In this context, Mr Siddiqui has drawn our attention to the assessment order dated 30.12.2019, concerning AY 2017-18 in respect of Shine Marbles, which, we are told, was the proprietorship concern of the deceased/assessee i.e., Mr Kuldeep Kohli.
12. In particular, our attention is drawn to paragraph 4 of the aforementioned order, which reads as follows:

“4. In response to Notice u/s 142(1) issued on 24.07.2019, Shri Darpan Kohli S/o Sh Kuldeep Kohli has attended and submitted that the assessee firm namely Shine Marbles has been dissolved on 01.1.2016 and also furnished copy of Dissolution Deed. Further, Shri Darpan Kohli submitted that the assessee firm has been taken over by Shri Kuldeep Kohli as proprietorship concern w.e.f. 01.1.2016. However, Mr. Kuldeep Kohli, Proprietor of the firm w.e.f. 01.11.2016 was left for heavenly abode on 22.12.2017. Shri Darpan Kohli attended the assessment proceedings of said firm as Legal Representative of Mr. Kuldeep Kohli”.
13. A careful perusal of the said extract will show that the respondent/revenue were aware of the factum of death of Mr Kuldeep Kohli, and that the proceeding had been attended by petitioner no.1, i.e., Mr Darpan Kohli.
14. It appears that since this fact came to the knowledge of the respondent/revenue,



the impugned assessment order, although addressed to the deceased/assessee, adverts to the one of the legal heirs, i.e., Darpan Kohli/petitioner no.1.

15. As noted above, deceased/assessee had more than one legal heir, which includes petitioner nos. 2 and 3.

16. Given this position, Mr Sunil Agarwal cannot but accept that the assessment order could not have been directed only against Darpan Kohli i.e., petitioner no.1.

17. Therefore, according to us, the best way to forward would be to set-aside the assessment order.

18. It is directed accordingly.

19. The AO will issue notice to the petitioners, and grant them opportunity to present their defense qua the merits of the case.

20. The notice will indicate the date and time of the hearing.

21. Furthermore, the AO will also permit the petitioners to file written response(s), if opportunity is sought in that regard.

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

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

24. Consequently, pending applications shall stand closed.

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

(RAJIV SHAKDHER)
JUDGE

(GIRISH KATHPALIA)
JUDGE

MAY 31, 2023/R.Y

Click here to check corrigendum, if any