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

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Decision delivered on: 04.07.2023

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W.P.(C) 8592/2023 & CM Nos.32646-47/2023

VODAFONE ROAMING SERVICES SARL Petitioner

Through: Ms Fereshte D. Sethna, Mr Mrunal Parekh, Mr Mohit Tiwari and Mr Abhishek Chauhan, Advs.

versus

ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE

INTERNATIONAL TAX 3 1 1, DELHI & ANR. Respondents

Through: Mr Aseem Chawla, Sr Standing Counsel with Ms Pratishtha Chaudhary and Mr Aditya Gupta, Advs. for R-1/Revenue.
Mr Manish Kumar, Adv. for R-2.

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 No.32647/2023

1. Allowed, subject to just exceptions.

W.P.(C) 8592/2023 & CM No.32646/2023 *[Application filed on behalf of the petitioner seeking interim relief]*

2. Issue notice.

2.1 Mr Aseem Chawla, learned senior standing counsel, accepts notice on behalf of the respondents/revenue.



3. Given the direction that we propose to issue, Mr Chawla says that he does not wish to file a counter-affidavit, and 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 is directed against the following orders and notices:

(i) Notice dated 02.06.2022 issued under Section 148A(b) of the Income Tax Act, 1961 [in short, “Act”].

(ii) Order dated 26.07.2022 passed under Section 148A(d) of the Act.

(iii) Consequential notice dated 27.07.2022 issued under Section 148 of the Act.

(iv) Notice dated 10.05.2023 issued under Section 142(1) of the Act.

(v) Draft assessment order dated 24.05.2023 passed under Section 144C(1) of the Act.

5. The record shows that the petitioner is a tax resident of Luxemburg.

6. It is the respondent/revenue’s assertion that the petitioner failed to file a return for the Assessment Year (AY) in issue, i.e., AY 2014-15.

7. The respondents/revenue take the stand that the petitioner has not offered for levy of tax, income earned against cellular roaming services provided to an entity going by the name Tata Tele Services Ltd.

7.1 The said income has been pegged at Rs.2,44,85,873/-.

8. According to the respondents/revenue, the income received nothing but royalty, and thus, falls within the purview of Section 9(1)(vi) of the Act.

9. On the other hand, it is the petitioner’s stand that no part of the income received, accrued or arose in India.



9.1 In sum, the petitioner claims that the said income was not chargeable to tax in India, which is why no return was filed.

10. Besides this, it is the petitioner's case that it had filed a substantive reply on 12.10.2022, not only *vis-à-vis* notice dated 02.06.2022 issued under Section 148A(b), but also the consequent notice issued under Section 148 of the Act dated 27.07.2022.

10.1 The petitioner claims that this reply has not been taken into account by the Assessing Officer (AO) while passing the impugned draft assessment order under Section 144C(1) of the Act.

11. It is also the petitioner's case that it was not served with a statutory notice, as required under the proviso appended to Section 144 of the Act.

12. We may note that there is a reference to a notice dated 17.05.2023 in the draft assessment order, which was purportedly issued under the proviso appended to Section 144 of the Act.

13. Given the aforesaid circumstances, Mr Chawla says that, apart from anything else, the petitioner's response dated 12.10.2022 ought to have been taken into account by the AO.

14. Having regard to the aforesaid circumstances, according to us, the best way forward would be to set aside the impugned draft assessment order. It is ordered accordingly.

15. Liberty is, however, granted to the AO to pass a fresh draft assessment order.

16. While passing fresh draft assessment order, the AO will take into account the reply dated 12.10.2022 filed by the petitioner.

17. Furthermore, the AO will grant personal hearing to the authorized



representative of the petitioner.

17.1 For this purpose, the AO will issue a notice setting forth the date and time of hearing.

18. Needless to add, the AO will deal with all the contentions raised by the petitioner in its reply dated 12.10.2022, and those which are adverted to in the instant writ petition.

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

20. Consequently, the pending interlocutory application shall stand closed.

21. Parties will act based on the digitally signed copy of the judgment.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

JULY 4, 2023

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Click here to check corrigendum, if any