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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Decision delivered on:07.07.2023

+ W.P.(C) 8949/2023

S.B. DISTRIBUTORS ACTING THROUGH ITS PARTNERS PETITIONER 2,
3 AND 4 AND ORS Petitioners

Through: Dr Rakesh Gupta, Mr Somil Agarwal and
Mr Anshul Mittal, Advocates

versus

INCOME TAX OFFICER WARD 35(1) DELHI & ORS. Respondents

Through: Mr Zoheb Hossain, Sr Standing Counsel
with Mr Sanjeev Menon, Jr Standing
Counsel for Revenue.

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.33933/2023

1. Allowed, subject to just exceptions.

W.P.(C) 8949/2023 & CM Appl. 33932/2023 [*Application filed on behalf of the petitioner seeking interim relief*]

2. Issue notice.

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

3. In view of the directions that we propose to pass, Mr Zoheb Hossain says that counter-affidavit need not be filed in the matter, and that he will argue the matter based on the record presently available with the court.

4. Dr Rakesh Gupta, who appears on behalf of the petitioner, says that apart from



anything else, the impugned assessment order dated 29.05.2023 passed under Section 147 read with Section 144 of the Income Tax Act, 1961 [in short, “the Act”] is flawed, as no show cause notice cum draft assessment order was served on the petitioner, proposing variation in income.

5. Dr Gupta says that on account of this fundamental flaw, the consequent steps taken by the Assessing Officer (AO), i.e., the issuance of demand notice dated 29.05.2023 and the penalty notices dated 29.05.2023 and 30.05.2023, are also unsustainable in law.

6. Mr Zoheb Hossain, learned senior standing counsel, who appears on behalf of respondent/revenue, cannot but accept that the law requires the AO to issue a show cause notice cum draft assessment order, proposing variation in income.

7. A perusal of the impugned assessment order shows that additions have been made, enhancing the taxable income of the petitioner.

8. Given the fact that no show cause notice cum draft assessment order was issued prior to upward revision of the petitioner’s income, the impugned assessment order is set aside, *albeit* with liberty to the AO to pass a fresh assessment order.

9. Before the AO passes a fresh assessment order, he will issue a show cause notice cum draft assessment order, indicating therein the proposed variation in income.

10. This exercise will be completed by the AO within the next four (4) weeks.

11. The petitioner will be at liberty to file a response. The response will be filed within four (4) weeks of receipt of the draft show cause notice cum draft assessment order.

12. 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 the hearing will be indicated.

13. Needless to say that the AO will pass a speaking assessment order, which would deal with the contentions embedded in the reply, if any, filed by the petitioner.

14. As a result of the directions issued hereinabove, the demand notice dated 29.05.2023, and the penalty notices dated 29.05.2023 and 30.05.2023, shall also collapse.

15. The above-captioned petition is disposed of, in the aforesaid terms.



16. Consequently, the pending application shall stand closed.
17. Parties will act based on the digitally signed copy of the order.

(RAJIV SHAKDHER)
JUDGE

(GIRISH KATHPALIA)
JUDGE

JULY 7, 2023/as

[Click here to check corrigendum, if any](#)