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

% *Date of decision: 18.08.2023*

+ **W.P.(C) 10942/2023**

PINKI TOUR AND TRAVELS LIMITED Petitioner

Through: Mr Chanderkant Tyagi with Mr Amar Gupta, Advocates.

versus

INCOME TAX DEPARTMENT Respondent

Through: Mr Ruchir Bhatia, Sr. Standing Counsel with Ms Deeksha Gupta, Advocate.

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. 42392/2023

1. Allowed, subject to just exceptions.

W.P.(C) 10942/2023 and CM APPL. 42393/2023 [*Application filed on behalf of the petitioner seeking interim relief*]

2. Issue notice.

3. Mr Ruchir Bhatia, learned senior standing counsel, who appears on behalf of the respondent/revenue, accepts notice.



4. Given the directions that we propose to pass, Mr Bhatia says that he does not wish to file a counter-affidavit in the matter, and he will argue the matter based on the record presently available with the court.

4.1 Therefore, with the consent of the learned counsels for the parties, the writ petition is taken up for hearing and final disposal at this stage itself.

5. This writ petition concerns Assessment Year (AY) 2018-19.

6. *Via* this writ petition, *inter alia*, the petitioner has raised a challenge to the assessment order dated 30.05.2023, passed by the respondent/revenue under Section 147 read with Section 144B of the Income Tax Act, 1961 [in short, “the Act”].

7. Counsel for the petitioner says that there has been a breach of principles of natural justice. For this purpose, our attention is drawn to the show cause notice (SCN) dated 22.05.2023, whereby it was indicated by the Assessing Officer (AO) that there is a proposed variation in the taxable income declared by the petitioner.

8. As required, the petitioner filed its response on 24.05.2023. In the response, the petitioner, *inter alia*, articulated its difficulty in uploading the entire books of accounts, as the file size exceeded the maximum limit provided, which was 5MB.

9. Since a personal hearing was also sought by the petitioner, a communication to that effect was served on the petitioner on 25.05.2023, whereby the petitioner was called upon to join a VC hearing on 26.05.2023 at 11.30 A.M.



10. Evidently, the petitioner requested the AO to reschedule the hearing to a date post 29.05.2023, on account of unavoidable personal commitments. The AO, at that point in time, served the petitioner with another communication dated 29.05.2023, calling upon the petitioner to furnish the documents in support of its case, by 30.05.2023 (10.00 A.M.).

11. Counsel for the petitioner says that even this communication had no meaning since the AO had already closed the proceeding on 26.05.2023. For this purpose, our attention has been drawn to Annexure 'P-18', appended on page 160 of the case file.

12. It is against this backdrop that the petitioner contends that there has been a complete breach of principles of natural justice.

13. Mr Bhatia cannot but accept, that if the record as placed before us is correct, which we have no reason to doubt since the writ petition is backed by an affidavit, there has been a breach of principles of natural justice.

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

14.1 It is ordered accordingly.

14.2 Liberty is however given to the AO to pass a fresh assessment order, *albeit* after giving due opportunity to the petitioner. For this purpose, a fresh notice will be issued by the AO, calling upon the petitioner to furnish the relevant material in support of its case. In the event the petitioner seeks a personal hearing *via* an authorised representative, the AO will grant such opportunity.



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

15.1 Consequently, pending interlocutory application shall also stand closed.

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

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

AUGUST 18, 2023 / tr