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

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Date of Decision: 29.08.2023

+ **W.P.(C) 11410/2023**

USHA GUPTA

..... Petitioner

Through: Mr Nitin Gulati with Mr Amol Sinha,
Adv.

versus

INCOME TAX OFFICER, WARD-36(1) DELHI & ORS.

..... Respondents

Through: Mr Sanjay Kumar, Sr. Standing
Counsel.

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. 44399/2023

1. Allowed, subject to just exceptions

W.P.(C) 11410/2023 & CM Appl. 44400/2023 [*Application filed on behalf of the petitioner seeking interim relief*].

2. Issue notice.

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

3. Given the order that we propose to pass, Mr Kumar 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. Therefore, with the consent of the learned counsels for the parties, the writ petition is

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taken up for hearing and final disposal at this stage itself.

4. This writ petition concerns Assessment Year (AY) 2013-14.

5. The petitioner seeks to assail the assessment order, dated 18.05.2023, passed under Section 147 read with 144B of the Income Tax Act, 1961 [in short, "The Act"].

6. Mr Nitin Gulati, learned counsel, who appears on behalf of the petitioner, confines his challenge, at this juncture, only to the infraction of principles of natural justice.

7. It is pointed out that the show cause notice dated 08.05.2023 (SCN), was served on the petitioner proposing a variation of taxable income.

8. *Via* the SCN, the petitioner was granted time to file a response by 10.05.2023 (15:46 hours).

9. The petitioner made a request on the very next date i.e., 09.05.2023, for adjournment. The petitioner sought adjournment till 18.05.2023. The reason given by the petitioner for seeking adjournment was that she had to gather material to respond to the SCN.

10. It is the petitioner's case that the request was not dealt with and on 18.05.2023 when she attempted to upload her response, she could not do so as the designated portal had been closed.

11. These facts are not in dispute.

12. The assessment order, as indicated above, was passed on 18.05.2023.

13. Without making any observations on the merits of the matter, we are inclined to set aside the assessment order, as this would be the best way forward.

13.1 It is ordered accordingly.

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14. Liberty is, however, granted to the Assessing Officer (AO) to pass a fresh assessment order after giving an opportunity to the petitioner.
15. Mr Gulati says that the petitioner will file a response within the next three (3) weeks.
16. The AO will ensure that the portal is opened for the petitioner to upload its reply.
17. Furthermore, the petitioner is also given liberty to transmit a copy of the reply to the Jurisdictional Assessing Officer (JAO) *via* email.
18. The AO will, thereafter, issue a notice to the petitioner for personal hearing. The notice will indicate the date and time when the hearing will take place.
- 18.1 Needless to add, the AO will, thereafter, pass a speaking order.
19. The writ petition is disposed of, in the aforesaid terms.
20. Consequently, the pending interlocutory applications shall stand closed.
21. Parties will act based on the digitally signed copy of the order.

**RAJIV SHAKDHER
JUDGE**

**GIRISH KATHPALIA
JUDGE**

AUGUST 29, 2023/R.Y.

Click here to check corrigendum, if any

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