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

% ***Date of decision: 12.04.2023***

\+ **W.P.(C) 13071/2022 & CM APPL. 39580/2022**

KANHAIYA LAL SHARMA ..... Petitioner

Through: Mr. Ruchesh Sinha and Ms. Nivedita, Advocates .

versus

DCIT, CIRCLE 13(1) DELHI & ANR. ..... Respondents

Through: Mr. Gaurav Gupta, Senior Standing Counsel with Mr. Puneet Singhal and Mr. Shivendra Singh, Advocates.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MS. JUSTICE TARA VITASTA GANJU
[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J.: (ORAL)

W.P.(C) 13071/2022 & CM APPL. 39580/2022*[Application filed on behalf of the petitioner seeking interim relief]*

1. This writ petition concerns Assessment Year (AY) 2016-17.

2. This writ petition is directed against the order dated 29.07.2022 passed under Section 148A(d) of the Income Tax Act, 1961[in short, "Act"] and the consequential notice of the same date i.e., 29.07.2022 issued under Section 148 of the Act.

3. The principal grievance, at this stage, of the petitioner is that the principles of natural justice have not been followed.

3.1. Mr. Ruchesh Sinha, learned counsel, who appears on behalf of the petitioner, says that neither was a notice under Section 148A(b) of the Act issued to the petitioner, nor was any hearing granted before passing the impugned order.

4. This matter was placed before the coordinate bench on 09.09.2022 when the counsel for the respondents/revenue sought time to take instructions.

4.1 Thereafter, the matter was listed before the Court, once again, on 28.09.2022, when certain judgments were adverted to, based on which, the counsel for the petitioner had sought time to examine the said judgments.

5. The record shows that no formal notice has been issued, although the matter has been listed before the Court on two previous occasions.

6. Issue notice.

6.1 Mr. Gaurav Gupta, accepts notice on behalf of the respondents/revenue.

7. Mr. Gupta says that he does not wish to file a counter-affidavit in the matter and will argue the matter based on the material already available on record. Therefore, with the consent of the counsels for the parties, the matter is taken up for final hearing and disposal.

8. As indicated above, the crux of the petitioner's grievance is the non-adherence to principles of natural justice.

9. Mr. Gupta, in defence of the impugned order, submits that the judgment of the Supreme Court rendered in ***Union of India vs. Ashish Aggarwal***, 2022 SSC Online 543 would not require the respondents/revenue to issue notice (i.e., notice under Section 148A(b) of the Act) once again, if a notice was already issued under Section 148 of the Act, under the old regime.

9.1 In this context, Mr. Gupta draws our attention to the initial notice issued under Section 148 of the Act dated 29.06.2021.

10. To our minds, this argument has several strands. The reason the Supreme Court in the ***Ashish Aggarwal*** case had granted time to the revenue to fall in line with the new regime, as embedded in the Act after Finance Act, 2021, was to give an opportunity to the revenue to furnish the material/information available with the Assessing Officer (AO) and to provide an opportunity to the assessee of being heard in the matter.

11. Even if we were to assume that there was no fresh material/information to be furnished to the assessee and that the AO could treat the notice dated 29.06.2021 issued under Section 148 of the Act, as notice under Section 148A(b) of the Act, the aspect which clearly comes to the fore is that, concededly, no hearing was provided to the petitioner.

12. That apart, the AO, in any event, had to indicate to the assessee (in this case, the petitioner), that the notice dated 29.06.2021 should be treated as a notice under Section 148A(b) of the Act. In this case, there is an absence of any such communication.

13. Therefore, in our view, the petitioner is right; the impugned order dated 29.07.2022 cannot be sustained in law. It is, accordingly, set aside.

14. The AO is, however, given liberty to take the next steps in law, as may be deemed fit.

15. The writ petition is disposed of in the aforesaid terms. The pending application shall stand closed.

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

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

APRIL 12, 2023/tp