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

% ***Decision delivered on: 30.10.2023***

\+ **W.P.(C) 11627/2023 & CM APPL. 45333/2023**

PRIYANKA SARASWAT DEV ALIAS RAKSHA ..... Petitioner

Through: Ms Kavita Jha, Adv.

versus

DEPUTY COMMISSIONER OF INCOME TAX & ANR.

..... Respondents

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

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MR. JUSTICE GIRISH KATHPALIA
[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

1. This writ petition came up for hearing before the court on 01.09.2023. After hearing the counsel for the parties, we had broadly articulated the grievances of the petitioner and the relief that she sought, having regard to the order passed on 22.09.2023 by the coordinate bench in the writ petition preferred by her husband, i.e., W.P.(C) 4649/2022

2. For the sake of convenience, the relevant parts of the order dated 01.09.2023 are extracted hereafter: -

> *"2. Ms Kavita Jha, who appears on behalf of the petitioner, says that in support of the petitioner's case, she relies upon the order dated 23.03.2022 passed by a coordinate bench of this court in*

W.P.(C) 4649/2022, titled Ulhas Prabhakar Khaire alias Sh. Lokeshwar Dev vs. Deputy Commissioner of Income Tax & Anr.

3. We are told that the aforesaid case concerns the husband of the petitioner.

4. The order passed by the coordinate Bench reads as follows:

> *"Present writ petition has been filed challenging the assessment orders dated 06th March, 2013 passed by the Respondents under Section 144 read with Section 153A of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') for the Assessment Years 2005-06 to 2011-12 and all consequential proceedings arising therefrom. In the alternative, the Petitioner seeks directions remanding the appeal preferred by the Petitioner before Respondent No.2 to be taken on record for adjudication on merits without mandatory pre-deposit and for staying the operation of the impugned orders till the disposal of appeal by Respondent No.2. Learned counsel for the Petitioner states that an unreasonably high demand of Rs. 436 crores has been raised without granting adequate opportunity to the Petitioner.*
>
> *Learned counsel for the Petitioner states that initially the notices were not served upon the Petitioner and when they were served in the jail, the Petitioner was moved out to other jails at different locations other than Tihar Jail. She emphasises that the Petitioner was in Judicial custody and had no means to adequately defend himself.*
>
> *Learned Counsel for the Petitioner states that an appeal was filed by the Petitioner before the Commissioner of Income Tax Appeal (II) assailing the ex parte assessment orders for the Assessment Year 2005-06 to 2011-12, however, the same were returned with numerous objections /deficiencies.*
>
> *Since the assessment years involved in the present case are more than ten years old, this Court disposes of the present writ petition and pending applications with a direction to Delhi High Court Legal Services Committee to provide legal assistance to the Petitioner, in the event, the petitioner applies for it.*
>
> *The Petitioner is given liberty to re-file/file appeals before Appellate Authorities along with the applications for condonation of delay and stay.*

> *The said applications shall be considered by the Appellate Authorities in accordance with law as well as in view of the peculiar facts and circumstances of the case.*
>
> *The Petitioner is further given liberty to file an application for release of copies of documents seized from the Petitioner's premises during search and seizure operation. In the event, such an application is filed, the same shall be decided by the jurisdictional Assessing Officer in accordance with law."*

5. We may note that Ms Jha submits that apart from the appeal before the Commissioner of Income Tax (Appeals), the petitioner in this case having regard to the experience of her husband, also seeks a direction from this court for being furnished soft copies of seized documents and electronic data available in DVDs/CDs/ Pen-Drives/HDDs without payment of any fees.

6. Mr Ruchir Bhatia, learned senior standing counsel, who appears on behalf of the respondent/revenue, says that he will return with instructions, on this aspect of the matter.

7. Accordingly, issue notice.

7.1 Mr Bhatia accepts notice on behalf of the respondent/revenue.

8. If instructions are received to resist the appeal, a counter-affidavit will be filed before the next date of hearing.

9. List the matter on 20.09.2023."

3. Today, we have disposed of an interlocutory application, i.e., CM No. 45193/2023 preferred in W.P.(C) 4649/2022, whereby certain additional directions have been issued in favour of the petitioner's husband, i.e., Ulhas Prabhakar Khaire Alias Sh. Lokeshwar Dev. These directions are also set-forth hereafter:

"7. However, having regard to the fact that the petitioner and his spouse have been in custody for a very long time and it is claimed that they do not have funds to progress their legal rights to contest the demands made against them by the respondent/revenue which runs into Rs.436 crores [as noticed by the coordinate Bench in its order dated 23.03.2022], we are of the view that the respondents/revenue should make the documents available to the petitioner at their own cost.

> *7.1 This direction, is issued bearing the mind the principle that access to justice which includes a litigant's right to take recourse to a remedy provided by law is embedded in Article 21 of the Constitution. Thus, given the facts and circumstances of this case the said principle will apply to the petitioner as well.*
>
> *8. Therefore, the above-captioned application is disposed of with the following directions:*
>
> *(i) Insofar as the documents which are available in electronic mode are concerned, the petitioner will be allowed to replicate the same on a hard-disk, under the supervision of the officer appointed by the respondents/revenue.*
>
> *(ii) Copies of the documents, which are available in hard-copy, will be furnished to the petitioner by the respondents/revenue at their own cost."*

4. Mr Ruchir Bhatia, learned senior standing counsel, who appears on behalf of respondent/revenue, says that the directions contained in the order dated 23.03.2022 passed in W.P.(C) 4649/2022 and the order passed in CM No. 45193/2023 filed in W.P.(C) 4649/2022 can be applied *mutatis mutandis* to this writ petition as well.

5. It is ordered accordingly.

6. The writ petition is disposed of in the aforesaid terms.

7. Pending application shall stand closed.

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

RAJIV SHAKDHER
JUDGE

GIRISH KATHPALIA
JUDGE

OCTOBER 30, 2023/RY Click here to check corrigendum, if any