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

% ***Date of decision:25.09.2023***

\+ **W.P.(C) 11935/2023 & CM APPL. 46713/2023**

AADI INDIA PRIVATE LIMITED ..... Petitioner

Through: Mr Nischay Kantoor, Mr Ved Jain and Ms Soniya Dodeja, Advocates.

versus

ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE 1(1), DELHI & ORS. ..... Respondents

Through: Mr Sanjeev Menon, Standing Counsel.
Mr Vinish Phoghat, SPC for R-3/UOI.

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. We heard the matter at length on 12.09.2023, whereupon we had etched out the broad contours of the matter. Thus, for the sake of convenience, the relevant parts of the order dated 12.09.2023 are extracted hereafter:

> *"2. This writ petition concerns Assessment Year (AY) 2019-20.*
> *3. Via the instant writ petition, a challenge is laid by the petitioner to the following order and notices:*
> *(i) Notice dated 23.02.2023 issued under Section 148A(b) of the Income Tax Act, 1961 [in short, "Act"].*

(ii) Order dated 31.03.2023 passed under Section 148A(d) of the Act.
(iii) Notice dated 31.03.2023 issued under Section 148 of the Act.

4. A perusal of the notice dated 23.02.2023 issued under Section 148A(b) of the Act would show that the principal allegation against the

petitioner, to begin with, was that there were unexplained credits in its bank account amounting to Rs.1,33,89,087/-.

4.1 It was alleged that the said credit entries arose on account of transactions with three entities going by the name M.K. Traders, Luxmi Agencies, and Lucky Traders.

5. The record shows that the petitioner filed a reply to the aforementioned notice on 07.03.2023. The stand taken by the petitioner was that it had not entered into any transaction with the aforementioned entities. The petitioner claims that it had also appended the bank statements of the accounts maintained with Indian Bank and ICICI Bank to its reply.

6. The Assessing Officer (AO), however, was not persuaded and proceeded to pass the impugned order dated 31.03.2023 under Section 148A(d) of the Act.

7. Mr Nischay Kantoor, who appears on behalf of the petitioner says that while passing the impugned order dated 31.03.2023, the AO has completely changed the goalpost.

7.1. It is submitted by Mr Kantoor that the AO now alleges that the petitioner has not explained the investments made in the unquoted shares of an entity going by the name Mahavir Transmission Ltd.

8. On the other hand, Mr Sanjeev Menon, learned Standing Counsel, who appears on behalf of the respondents/revenue, states that a perusal of the order passed under Section 148A(d) of the Act would show that the petitioner had not furnished the bank statement concerning ICICI Bank.

8.1 As noted above, this is refuted by Mr Kantoor and, in this behalf, he has drawn our attention to the bank statements which are appended on page 394 of the case file.

9. It appears that prima facie, Mr Kantoor is right that there has been a change in goalpost. This is evident upon perusal of the following extract from the impugned order:

> *"As per information assessee had taken accommodation entry from M/s. MK Traders, Luxmi Agencies & Lucky Traders which are entities controlled by Sh. Manish Gupta as unexplained credits. The assessee in its reply denied to have any transaction with said entities, it provided its copy of bank statement with the Indian Bank (A/c No.50316904371) for the period from 01.04.2018 till 31.12.2018 considering the date of search was 31.10.2018. On examination of said bank statement there is no credit entry for the amount as mentioned in the information receipt. As per the audit report of the assessee it had revenue from operation amounting to Rs.56,079/- and revenue from other income amounting to*

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Rs.64,10,815/-. In note 17 for other income it had profit from sale of assets amounting to Rs.63,80,559/- and interest on security of Rs.30,256/-, the figure mentioned in the information nowhere matches with the above figure. In its reply the assessee is mentioned one more bank account with ICICI Bank (A/c No. 028405000028), the bank statement of which it has failed to submit. The closing balance in it shown as Rs. 11,019/-. In the balance sheet of the assessee during the relevant assessment year there is no increase in share capital, there is no fresh unsecured loans, among the other current liabilities also the closing figure is of Rs. 45,494/-, but in note 11 non-current investment there is share application money of Rs. 17,50,000/- pending for allotment another figure of Rs. 92,50,000/- which are investment in un-quoted share of Mahavir Transmission Ltd. This investment is not shown in the preceding year conveying it has been received during the year under consideration. The assessee had not commented anything with respect to them. Considering the discussion above, the reply of the assessee is not considered satisfactory and complete."

[Emphasis is ours]

10. As is evident from the aforementioned extract, what started as an allegation concerning unexplained entries has now taken the shape of unexplained investment, without any charge being levelled in that regard in the notice issued under Section 148A(b) of the Act.

11. The investment could be considered unexplained only if some explanation was sought by the AO in the first instance.

12. Since Mr Menon has asserted, based on the observations made in the impugned order passed under Section 148A(d) of the Act, that the bank statement of the account maintained by the petitioner with ICICI Bank was not furnished, we are inclined to allow Mr Menon to obtain instructions in the matter.

13. Mr Menon will also have the AO visit the designated portal and furnish instructions after having completed that exercise.

14. Issue notice.

14.1 Mr Sanjeev Menon, learned standing counsel, accepts notice on behalf of the respondents/revenue.

15. Mr Menon will return with instructions. In case instructions are received to resist the writ petition, a counter-affidavit will be filed at least three days before the next date of hearing.

16. List the matter on 25.09.2023.

17. Meanwhile, there shall be a stay on the operation of impugned notices and order, referred to hereinabove.

2. Mr Sanjeev Menon, learned standing counsel, who appears on behalf of the respondents/revenue, has returned with instructions. He informs us

that the stand taken on behalf of the petitioner/assessee on the previous date, that the statement of account was uploaded on the designated portal, is correct.

3. Thus, having regard to what transpired on 12.04.2023, it is clear that the goal post was indeed shifted by the Assessing Officer (AO). In the first instance, he had called upon the petitioner/assessee to explain what he thought were unexplained credits in the bank account amounting to Rs.1,33,89,207/-. It is also alleged that these entries pertained to three entities going by the name M.K. Traders, Luxmi Agencies and Lucky Traders. Since the petitioner had taken the stand that it had not dealt with these entities, it appears that the AO then proceeded to examine a non-current investment made in share application money of an entity going by the name of Mahavir Transmission Ltd.

4. It was in the context of the stand taken by the petitioner/assessee (that it had not dealt with any of the three entities mentioned herein above), Mr Menon was told to confirm whether the bank statement was uploaded on the designated portal, as asserted.

5. Given this position, Mr Menon says that no purpose will be served at this juncture by filing a counter-affidavit in the matter, as the record speaks for itself. Accordingly, the impugned notices and orders are set aside.

5.1 Liberty is, however, given to the AO to take next steps in the matter, as per law.

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

7. Consequently, the pending application shall also stand closed.

8. Interim order dated 12.09.2023 shall stand vacated.

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

(RAJIV SHAKDHER)
JUDGE

(GIRISH KATHPALIA)
JUDGE

SEPTEMBER 25, 2023/v

Click here to check corrigendum, if any