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

% *Date of Decision:18.09.2023*

\+ **W.P.(C) 12197/2023**

POOJA GUPTA ..... Petitioner

Through: Mr Sumit Lalchandani, Adv.

versus

ASSESSMENT UNIT, NATIONAL FACELESS ASSESSMENT CENTRE & ORS. ..... Respondents

Through: Mr Kunal Sharma, Sr Standing Counsel with Mr Shubhendu Bhattacharya, Standing Counsel.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MR. JUSTICE GIRISH KATHPALIA

[Physical Hearing/Hybrid Hearing (as per request)]

CM Appl.47895/2023

1. Allowed, subject to just exception.

W.P.(C) 12197/2023 & CM Appl.47894/2023 [***Application filed on behalf of the petitioner seeking interim relief***]

2. Issue notice.

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

3. Given the directions that we propose to pass, Mr Sharma says that no counter-affidavit is required to be filed, and that he will rely on the documents presently available with the Court.

4. This writ petition concerns Assessment Year (AY) 2017-18.

5. The following allegation is levelled against the petitioner:

> *"...During the F.Y 2016-17, Smt. Pooja Gupta had transferred an amount to the tune of Rs. 55,00,000/- in the Axis Bank Ale No.913020038218249 owned and controlled by Sh. Atul Tyagi for entry purpose. Thus, the genuineness and creditworthiness of the transaction remain unverified.*"

6. The case made out against the petitioner/assessee pivoted on a statement made by one Mr Atul Tyagi, who had purportedly admitted on oath to have been an entry provider. This assertion is contained in a notice dated 20.05.2022 issued under Section 148A(b) of the Income Tax Act, 1961 [in short, "Act"].

7. What is not in dispute is that the petitioner had not filed a reply to the said notice, but thereafter, filed a reply to a notice dated 10.04.2023 issued to her under Section 142(1) of the Act. This reply is dated 17.04.2023. In the reply, the petitioner took the stand that she had examined the bank statement and found that the transfer of Rs. 55 lakhs, as alleged, had not occurred.

7.1 Furthermore, *via* the said reply, the petitioner submitted that since she does not maintain books of accounts, it would be useful if any document or information that was available with the Assessing Officer (AO) concerning the allegation would be furnished to her. According to the petitioner, no information/material was furnished to her. However, what did follow was a show cause notice dated 25.05.2023, proposing a variation in her income.

8. Mr Sumit Lalchandani, who appears on behalf of the petitioner, says that a perusal of the show cause notice would show that the petitioner was given only a day to respond.

8.1 In this behalf, our attention has been drawn to paragraph 3 of the show cause notice dated 25.05.2023. A perusal of the contents of paragraph 3 reveals that the petitioner was directed to file a response by 26.05.2023

[15:00 hrs.]

9. Mr Lalchandani says that the AO ought to have granted a minimum of seven days to the petitioner to submit her response.

9.1 For this purpose, our attention is drawn to the Standard Operating Procedure (SOP) dated 03.08.2022 framed by the National Faceless Assessment Centre, Delhi [NFAC]. Mr Lalchandani places reliance on the following part of the SOP:

> "*N.1.3 To ensure adherence to the principles of natural justice and reasonable opportunity to the assessee, timelines to be given for obtaining response to the SCN shall be:*
> *N.1.3.1 Response time of 7 days from the issue of SCN.*
> *N.1.3.2 Response time of 7 days may be curtailed, keeping in view the limitation date for completing the assessment…"*

10. In sum, Mr Lalchandani says that there has been a breach of the principles of natural justice since not only has there been a curtailment of time, but also, no information/material has been furnished in support of the allegation levelled against the petitioner.

11. On the other hand, Mr Sharma says that para N.1.3.2 of the SOP would show that where limitation was coming to an end, the AO could curtail the response time, which is ordinarily seven days.

12. We have heard counsel for the parties and perused the record.

13. As indicated by Mr Lalchandani, we are not examining the merits of the matter. The only issue that is being looked at, at this juncture, concerns the breach of the principles of natural justice.

14. There is no doubt that the SOP does require the AO to grant a minimum of seven (7) days to respond to the show cause notice.

15. No doubt, as contended by Mr Sharma, that the period of seven (7)

days can be curtailed if the period of limitation provided for completing the assessment is coming to an end. In the facts of the case, what is seen is that the Section 142(1) notice was issued as far back as on 10.04.2023. The petitioner responded to the same on 17.04.2023.

16. Therefore, the AO, at that juncture, had enough time to take appropriate steps, including issuing a show cause notice, if he intended to propose variations in the petitioner's income. The AO, by waiting till 25.05.2023, created a situation whereby, he could not have granted clear seven (7) days for filing a response, as stipulated in the SOP. The AO took an extreme position by providing only twenty-four hours to the petitioner to file a response. Perhaps, a couple of days more could have been given, having regard to the narrow timeframe that was available to him. More importantly, in this case, since the petitioner has taken the position that she has not entered into a transaction with Atul Tyagi, it was incumbent upon the AO to furnish relevant material which would in the very least, *prima facie*, demonstrate that the assertion was believable.

17. Thus, having regard to the foregoing reasons, we are of the view that the best way forward would be to set aside the impugned assessment order, with liberty to the AO to pass a fresh order, after giving an opportunity to the petitioner to file a reply.

17.1 It is ordered accordingly.

18. The impugned assessment order is set aside.

18.1 However, leave is granted to the AO to pass a fresh order. Before the AO proceeds to pass a fresh order, he will furnish information/material that supports the allegation levelled against the petitioner.

19. Once information/material is furnished to the petitioner, the AO will

grant two (2) weeks to the petitioner to file a reply.

20. Furthermore, the AO will also grant a personal hearing to the petitioner and/or her authorized representative.

21. Needless to add, the AO will pass a speaking order, a copy of which will be furnished to the petitioner.

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

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

SEPTEMBER 18, 2023/pmc