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

% *Date of Decision:12.10.2023*

+ **W.P.(C) 14102/2021**

RAJESH KAPOOR ..... Petitioner
Through: Mr Gurdeep Singh, Adv.

versus

UNION OF INDIA & ANR. ..... 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)]

1. This writ petition is directed against a notice of demand dated 03.09.2021.

2. The writ petition came up for hearing before this court for the first time on 10.12.2021.

2.1 Notice in the matter was issued to respondent no.2/revenue on 17.12.2021.

3. The record shows that on 15.02.2022, Mr Kunal Sharma, learned senior standing counsel, entered appearance on behalf of respondent no.2/revenue.

4. Since Mr Sharma had sought time to take instructions in the matter, an interim order was passed to the effect that till further orders, the demand notice dated 03.09.2021 shall not be enforced.

4.1 This order was made absolute, *albeit* during the pendency of the writ petition *via* the order dated 09.02.2023.

5. Although even on 09.02.2023 further time was granted to file a counter-affidavit in the matter, the respondent no.2/revenue has failed to do so.

6. Given this position, the assertions made in the writ petition remain uncontested.

7. The petitioner/assessee has asserted that the assessment order dated 03.09.2021 which preceded the impugned demand notice was passed without taking into account the reply filed by the petitioner/assessee to the show cause notice.

8. The reply to the show cause notice, dated 16.08.2021, has been placed on record.

9. Having regard to the aforesaid factual position, which remains unrebutted, we are constrained to set aside the impugned demand notice. However, the rationale for setting aside the demand notice is that the reply filed by the petitioner to show cause notice, which resulted in the passing of the assessment order, was not taken into account.

10. Therefore, under the residuary prayer that the petitioner/assessee has made in the writ petition, we set aside the assessment order as well.

11. Liberty, though, is given to the Assessing Officer (AO) to pass a fresh assessment order, after giving due opportunity to the petitioner/assessee.

11.1 The AO will take into account the reply dated 16.08.2021 submitted by the petitioner to the show cause notice dated 27.05.2021.

12. Needless to add, the AO will also accord a personal hearing to the petitioner/assessee.

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

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

OCTOBER 12, 2023/pmc