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

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Decision delivered on: 27.04.2023

+ **W.P.(C) 17463/2022 & CM APPL. 55727/2022**

M/S TIRUPATI TRADING CORPORATION Petitioner
Through: Mr Ravi Pratap Mall and Mr Uma
Shankar, Advs.

versus

ASSISTANT COMMISSIONER OF
INCOME TAX AND ANR. Respondents
Through: Mr Abhishek Maratha, Sr Standing
Counsel with Mr Akshat Singh, Jr
Standing Counsel.

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):

1. On the previous date i.e., 21.12.2022, after hearing the learned counsel for the parties at some length, we had broadly etched out the contours of the case. Accordingly, the relevant parts of the order dated 21.12.2022 is set forth hereafter:

“2. This writ petition is directed against the order dated 28.07.2022 passed under Section 148A(d) of the Income Tax Act, 1961 [in short “Act”] concerning Assessment Year (AY) 2015-16 and the consequential notice of even date, i.e., 28.07.2022 issued under Section 148 of the Act.

3. The allegation leveled against the petitioner is that income amounting to Rs.1,71,53,467/- chargeable to tax has escaped assessment.

3.1 Consequently, a notice under Section 148A(b) of the Act dated 26.05.2022 was issued to the petitioner.

4. The petitioner, according to the respondents, provided accommodation entries to Mittersain Rajesh Kumar [proprietor Mr Hitesh Jain] and is one of the beneficiaries of accommodation entries provided by one Mr Ramesh Kumar Bagri.

5. The petitioner has placed on record two replies dated 13.06.2022 and

21.07.2022 filed before the Assessing Officer (AO).

5.1. Besides this, Mr C.S. Aggarwal, learned senior counsel, who appears on behalf of the petitioner, has also drawn our attention to a “whomsoever it may concern” certificate dated 15.12.2022 issued by the petitioner’s banker, i.e., Central Bank of India, vis-à-vis Mr Ramesh Kumar Bagri [See Annexure P-13 appended on page 182 of the case file].

5.2. Based on the said certificate, it is sought to be established that during the period under consideration, i.e., Financial Year (FY) 2014-15, the petitioner had not entered into any transaction with Mr Ramesh Kumar Bagri.

5.3. Insofar as Mittersain Rajesh Kumar [proprietor Mr Hitesh Jain] is concerned, we are informed that since there was no reference to any bank account, similar certificate could not be obtained from its banker. However, the stand of the petitioner is that it has not entered into any transaction even with Mittersain Rajesh Kumar [proprietor Mr Hitesh Jain].

6. We may note that for a different AY, i.e., AY 2016-17, the parties are at lis, which is subject matter of W.P.(C)No.15017/2022, titled Tirupati Trading Corporation v. Assistant Commissioner of Income Tax.

6.1 On 16.12.2022, we issued notice in the said writ petition. However, in that case, the allegation qua the petitioner was confined only to the issue concerning Mr Ramesh Kumar Bagri.

7. According to us, the matter requires further examination. 8. Issue notice.

8.1. Mr Abhishek Maratha accepts notice on behalf of the respondents/revenue.

9. Counter-affidavit will be filed within the next four weeks.

9.1 Rejoinder, thereto, if any, will be filed before the next date of hearing.

10. List the matter on 26.04.2023.

11. In the meanwhile, there shall be a stay on the impugned order and notice mentioned hereinabove, till further directions of the court.”

2. To be noted, a counter-affidavit has not been filed.

3. Mr Abhishek Maratha, learned senior standing counsel, who appears on behalf of the respondents/revenue, has returned with instructions.

3.1 The instructions received by Mr Maratha are to the following effect:

(i) First, insofar as the allegation levelled against the petitioner, that it had been provided accommodation entry by Mr Ramesh Kumar Bagri is concerned, the stand of the Assessing Officer (AO) is that the said allegation does not concern the petitioner i.e., Tirupati Trading Corporation. The AO

has conveyed that the assessee under his sway is M/s Tirapati Trading Company.

(ii) Second, insofar as the allegation involving provision of accommodation entries to Mr Mittersain Rajesh Kumar was concerned, the AO has conveyed that since the accommodation entry, as per the information received, is only Rs.28,90,383/- i.e., below Rs.50,00,000/-, this fact needs to be noted.

4. Cleary, insofar as this aspect is concerned, even according to Mr Maratha, the reassessment proceedings cannot be triggered.

4.1 The position would be the same, insofar as the allegation involving Mr Ramesh Kumar Bagri is concerned.

5. Accordingly, the prayer made in the writ petition is allowed.

6. The impugned order dated 28.07.2022 passed under Section 148A(d) of the Income Tax Act, 1961 [in short, "Act"] is set aside.

6.1 Consequently, the notice dated 28.07.2022 issued under Section 148 of the Act will also collapse.

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

8. Consequently, pending application shall also stand closed.

9. Interim order dated 21.12.2022 shall stand vacated.

10. The Registry is directed to scan and upload the copy of the communication dated 24.04.2023, placed before us by Mr Maratha, so that it remains embedded in the case file.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

APRIL 27, 2023/aj