$~60

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

\+ W.P.(C) 6441/2024 & CM APPL. 26858/2024 (Stay)

SURESH CHAND GARG ..... Petitioner

Through: Mr. Satyen Sethi and Mr. Arta Trana Panda, Advs.

versus

ASSTT. COMMISSIONER OFINCOME TAX, CIRCLE 43(1), & ORS. ..... Respondents

Through: Mr. Ruchir Bhatia, SSC along with Mr. Anant Mann, JSC.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

<u>O R D E R</u>

% **15.05.2024**

1. We had in terms of our order of 06 May 2024 noticed the principal issues which were raised. That order reads thus:-

> “1. Prima facie and on a reading of the impugned order under Section 148A(d) of the Income Tax Act, 1961 ["**Act**"], we find that the Assessing Officer has clearly failed to assign any reasons while proceeding to dispose of the objections which were submitted pursuant to the notice under Section 148A(b) of the Act.
>
> 2. This is evident from a reading of paragraph no.6 of the impugned order which reads thus:-
>
>> "**6**. Remarks of the AO: The assessee in his reply has submitted copy of ITR, computation of income, purchase deed copy and other details. Further, on perusal of the details/documents filed by the assesse, there is need of elaborated explanation for the transactions made by the assesse during the period under consideration. However, since the assesse has failed to justify conclusively each transactions flagged with details of each transaction along with detailed evidence. Hence, it is a fit case for issuing of notice u/s 148 of the Act.
>>
>> **6.1** The assessee vide notice u/s 148A(b) dated 23.03.2024 was required to explain/justify the above transactions with

> supporting documents on or before 08.04.2024. However, mere filing of few details/documents, do not have any explanation w.r.t. the abovementioned transactions. Therefore, the total transactions of Rs. 23,10,73,125/- remain unexplained in the hands of the assessee for the year under consideration."
>
> 3. In view of the aforesaid, let learned counsel for the respondents obtain instructions. Let the matter be called again on 15.05.2024.

2. Although we had granted time to the respondents to provide instructions, learned counsel has not been provided the same till date.

3. As was noticed by us in our earlier order, the solitary aspect which constrains us to come to conclude that the impugned order would not sustain is an apparent and ex facie failure to record reasons while dealing with the objections which had been raised. The aforesaid fundamental error from which the order suffers cannot possibly be cured by way of any disclosure that the respondents may choose to make by way of an affidavit. There would thus be no justification to retain this petition on our Board.

4. In view of the aforesaid, we allow the instant writ petition and set aside the order referable to Section 148A(d) and notice issued under Section 148 of the Income Tax Act, 1961 [‘**Act**’] dated 10 April 2024. However, the aforesaid shall be without prejudice to the respondents to initiate proceedings from the stage of Section 148A(b) of the Act if so permissible in law.

5. All rights and contentions of respective parties are kept open.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MAY 15, 2024/RW