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

+ **W.P.(CRL) 2160/2024, CRL.M.A. 21039/2024**

AJAY KUMAR BISHNOI

.....Petitioner

Through: Mr. Siddharth Aggarwal, Sr. Adv.
with Mr. Ankit Sibbal, Mr. Nkhil S.,
Advs.

versus

DEPUTY COMMISSIONER OF INCOME TAX & ANR.

.....Respondents

Through: Mr. Sanjay Kumar, Standing Counsel
Ms. Easha, Advs. for R-1/Revenue
Tax Department.
Mr. Shiva Krishnamurti, Adv. for R-
2.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

24.07.2024

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CRL.M.A. 21038/2024

1. Exemption allowed, subject to all just exceptions.
2. Application stands disposed of.

W.P.(CRL) 2160/2024

3. The present petition has been filed under article 226 & 227 of Constitution of India for issuance of writ of certiorari and mandamus in the nature of order or direction quashing the complaint under section 200 Cr.P.C. bearing No. CT Cases 524624/2016 for offence under section 276b & 279(1) read with section 278e of The Income Tax Act, 1961 dated 13.04.2015, for quashing the summoning order issued vide



order dated 05.08.2015 as well as warrants issued by the court of Ld. ACMM (Special Acts), District Court, Central District, Tis Hazari, Delhi vide its order dated 15.04.2024 owing to the statutory bar of the insolvency and bankruptcy code, 2016.

4. Sh. Siddharth Aggarwal, learned senior counsel for the petitioner submits that the Ld. ACMM has fallen into a grave error by observing that despite the service of court notice, OL of accused No.1 has not appeared, this court deemed it appropriate to proceed in-absentia of accused No.1.
5. Learned senior counsel submits that accused No.1 is a company and that the proceedings cannot continue in absence of accused No.1/company. Learned senior counsel submits that accused No.2 is merely a director who is vicariously liable.
6. Learned senior counsel submits that his application under Section 91 Cr.P.C. and Section 70(2)/205 r/w Section 317 Cr.P.C. is still pending for disposal.
7. Learned counsel has appeared on behalf of OL and has taken an objection that in fact the application was moved against arraying the resolution professional. However, now the official liquidator has been appointed thus application is not maintainable. All these objections can be taken before Ld. ASJ. Learned counsel undertakes that the OL shall appear before the Ld. ACMM.
8. In the circumstances, the petition is disposed of with the direction to the Ld. ACMM (Special Acts), District Court, Central District, Tis Hazari, Delhi to first decide the application under Section 91 Cr.P.C. and Section 70(2)/205 r/w Section 317 Cr.P.C. in accordance with the



law.

9. The petition stands disposed of.

JULY 24, 2024/AR..

DINESH KUMAR SHARMA, J