2024:DHC:8152-DB

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

% *Date of Decision : 22.10.2024*

\+ **W.P.(C) 14817/2024 & CM APPL. 62273/2024**

SAURABH BAHETY .....Petitioner

Through: Mr Amit Kaushik, Advocate.

versus

INCOME TAX OFFICER WARD 63(1), DELHI .....Respondent

Through: Mr Vipul Aggarwal, SSC, Mr Girban Naushad and Ms Sakshi Shairwal, JSCs.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

VIBHU BAKHRU, J. (*ORAL*)

1. Issue notice. The learned counsel for the Revenue accepts notice.

2. The petitioner has filed the present petition, *inter alia,* impugning the order dated 23.09.2024 (hereafter *the impugned order*) passed under Section 270AA of the Income Tax Act, 1961 (hereafter *the Act*) rejecting the petitioner's application for immunity from imposition of penalty.

3. The learned Assessing Officer (hereafter *the AO*) had, in the assessment order passed under Section 143(3) of the Act, observed that no immunity from penalty could be granted as the assessee's case was one of

"under-reporting of income in consequence of mis-reporting". This was also noted by the AO in the impugned order.

4. The controversy relates to the income and expenditure booked on account of interest accrued and payable. The petitioner had availed certain interest-bearing loans, and at the same time, had also advanced unsecured loans. The AO found that the interest payable in respect of certain loans advanced by the assessee was higher than the interest at which the funds were arranged. For the aforesaid reason, the assessee had made an addition of ₹ 23,29,606/- being on account of the negative spread of interest.

5. *Prima facie,* this case would not be one of mis-reporting as the facts on the basis of which additions have been made appear to be disclosed by the assessee.

6. The AO had issued the Show Cause Notice dated 17.09.2024 to the assessee calling upon him to show cause as to why his application for immunity from imposition of the penalty not be rejected on the ground that the petitioner's case was of under reporting of income on account of mis-reporting. The petitioner claims that he had attempted to seek an adjournment online, however, he faced with certain technical difficulties and was not able to do so.

7. It is noted that consequently, the impugned order has been passed without considering the contentions of the petitioner, as sought to be advanced before this Court.

8. The learned counsel appearing for the Revenue fairly states that in

the given circumstances, the matter may be remanded to the AO to consider the request of the petitioner for immunity from imposition of the penalty under Section 270AA of the Act, afresh. This course commends to this Court.

9. We, accordingly, set aside the impugned order passed by the AO under Section 270AA of the Act and remand the matter to the AO to consider afresh. The AO shall pass a fresh order after affording an opportunity of being heard to the petitioner, in accordance with law.

10. The petition is disposed of in the aforesaid terms. Pending application also stands disposed of.

VIBHU BAKHRU, J

SWARANA KANTA SHARMA, J

OCTOBER 22, 2024

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Click here to check corrigendum, if any