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

% *Date of decision: 01.02.2023*

+ **W.P.(C) 1244/2023**

ASHOK KUMAR GARG Petitioner
Through: Mr Krishnan S. Advocate.

versus

ASSISTANT COMMISSIONER OF INCOME TAX & ANR.
..... Respondents
Through: Mr Puneet Rai, Sr. 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)

CM APPL. 4723/2023

1. Allowed, subject to just exceptions.

W.P.(C) 1244/2023 and CM APPL. 4722/2023 [Application filed on behalf of the petitioner seeking interim relief]

2. This writ petition is directed against order dated 30.03.2022 passed under Section 148A(d) of the Income Tax Act, 1961 [in short, "the Act"] and the consequential notice of even date i.e., 30.03.2022, issued under Section 148 of the Act.

2.1 Apart from the aforementioned direction which the petitioner has sought, a prayer has also been made that the respondents/revenue should be called upon to furnish the copies of the approvals said to have been granted

under Section 151 of the Act.

3. Mr Krishnan S., who appears on behalf of the petitioner/assessee, draws our attention to the fact that the notice under Section 148A(b) of the Act, which is dated 23.03.2022, called upon the petitioner to file a response “on or before 30.03.2022.”

3.1 It is Mr Krishnan’s contention that the reply was filed on 30.03.2022, despite which, the impugned order passed under Section 148A(d) of the Act, curiously, notes that no reply was filed. In other words, the argument is that the aforementioned impugned order does not take into account the objections placed on record by the petitioner.

4. We may note that the broad allegation against the petitioner is that he is a beneficiary of bogus purchase bills furnished by three entities referred to in the notice and the impugned order.

5. It is the petitioner’s stand that out of the three entities mentioned it is only dealt with two, out of three entities.

5.1. Furthermore, according to the petitioner, although the amount of alleged bogus purchase bills has been quantified as Rs.24,10,705/- the amount in issue is only Rs.13,73,503/-. It is, thus, the petitioner’s case that Rs.10,37,202/- has been wrongly included.

6. Mr Puneet Rai, learned senior standing counsel, who appears on behalf of the respondents/revenue, on the other hand, cannot but accept that since the reply was on record, the impugned order wrongly notes that the petitioner had not filed the reply.

7. Therefore, in our view, on this short ground alone, the impugned order deserves to be set aside.

7.1 It is ordered accordingly.

8. However, liberty is given to the Assessing Officer (AO) to carry out a *de novo* exercise, after giving due opportunity to the petitioner which would include furnishing to the petitioner the information/material available with the AO and the copies of approvals obtained under Section 151 of the Act.

8.1. In case the petitioner wishes to file a supplementary reply, opportunity in that behalf will also be accorded to him.

8.2. The AO, after granting the petitioner and/or his authorized representative a personal hearing in the matter, will pass a speaking order; a copy of which will be furnished to the petitioner.

8.3. In case the petitioner is aggrieved by the order passed by the AO, he will have liberty to take recourse to an appropriate remedy available to him in law.

9. The writ petition is disposed of in the aforesaid terms. The pending application shall also stand closed.

10. Parties will act based on the digitally signed copies of the order.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

FEBRUARY 1, 2023 / tr

[Click here to check corrigendum, if any](#)