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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 31.05.2023

+ **W.P.(C) 7825/2023**

ASHOK JAIN

..... Petitioner

Through: Mr Gaurav Gupta, Advocate.

versus

ASSESSMENT UNIT INCOME TAX DEPARTMENT NEW
DELHI

..... Respondent

Through: Mr Gaurav Gupta, Sr. Standing
Counsel with Mr Shivendra Singh and
Mr Puneett Singhal, Jr. Standing
Counsel.

CORAM:

**HON'BLE MR JUSTICE RAJIV SHAKDHER
HON'BLE MR JUSTICE GIRISH KATHPALIA**

O R D E R

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31.05.2023

[Physical Hearing/Hybrid Hearing (as per request)]

CM APPL.30174/2023

1. Allowed, subject to the petitioner filing legible copies of the annexures, at least three days before the next date of hearing.

W.P.(C) 7825/2023 and CM APPL.30173/2023 [Application filed on behalf of the petitioner seeking interim relief]

2. Issue notice.

2.1 Mr Gaurav Gupta, learned senior standing counsel, who appears on behalf of the respondent/revenue, accepts notice.

3. Given the directions that we propose to pass, Mr Gupta says that he

Signature Not Verified

Digitally Signed By TARUN
RANA

Signing Date: 23.06.2023
15:16:31

W.P.(C) 7825/2023

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does not wish to file a counter-affidavit in the matter, and he will argue the matter based on the record presently available with the court.

3.1 Therefore, with the consent of the learned counsels for the parties, the writ petition is taken up for hearing and final disposal, at this stage itself.

4. This writ petition concerns Assessment Year (AY) 2016-17.

5. The substantive prayer made in the writ petition reads as follows:

“(A) Issue a writ, order or direction in the nature of Mandamus or Certiorari or any other appropriate writ against quashing of SCN u/s 148A(b) dated 18.05.2022, impugned order u/s 148A(d) dated 22.07.2022 and impugned order u/s 147 dated 19.04.2023 for the A.Y. 2016-17 and all other consequential proceedings.”

6. The principal grievance of the petitioner is that not only were principles of natural justice breached, but that the order passed on 22.07.2022 under Section 148A(d) of the Income Tax Act, 1961 [in short, “the Act”] traverses beyond the allegations levelled against the petitioner in the notice dated 18.05.2022 issued under Section 148A(b) of the Act.

7. Mr Gupta, who appears on behalf of the respondent/revenue, cannot but accept that principles of natural justice have been breached.

8. Accordingly, in our view, the best way forward would be to set the clock back to the stage at which notice dated 18.05.2022 under Section 148A(b) of the Act is positioned.

8.1 It is ordered accordingly.

9. Consequently, the order dated 22.07.2022 passed under Section 148A(d) of the Act and the assessment order dated 19.04.2023 passed under



Section 147 of the Act are set aside. The consequential notice issued under Section 148 of the Act, which is dated 22.07.2022, is also set aside.

9.1 The AO is, however, given liberty to recommence the proceeding. Before the AO recommences the proceeding, he will issue notice to the petitioner, according him and/or his authorised representative an opportunity of personal hearing.

9.2 For this purpose, the AO will issue notice indicating the date and time of the hearing.

10. Needless to add, the AO will pass a speaking order both insofar as the provisions of Section 148A(d) of the Act are concerned, and insofar as the assessment order is concerned.

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

12. Pending application shall also stand closed.

13. Parties will act based on the digitally signed copy of the order.



RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

MAY 31, 2023 / tr