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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 13.01.2023

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W.P.(C) 17525/2022 & CM Appl.55911-12/2022

SUNDEEP KATHURIA

..... Petitioner

Through: Mr Salil Kapoor, Dr Shashwat Bajpai,
Ms Ananya Kapoor & Mr Akshay
Anurag, Advs.

versus

DEPUTY DIRECTOR OF INCOME TAX, INVESTIGATION,
DD/ADIT-INV-1-1, FAIU

..... Respondent

Through: Mr Sanjay Kumar & Ms Easha
Kadian, Advs.

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 No.55912/2022

1. Allowed, subject to just exceptions.

W.P.(C) 17525/2022 & CM Appl.55911/2022*[Application filed on behalf
of petitioner seeking interim relief]*

2. Issue notice.

2.1 Mr Sanjay Kumar accepts notice on behalf of the
respondent/revenue.

3. In view of the directions that we intend to pass, Mr Kumar says that a
counter-affidavit is not required to be filed. Therefore, with the consent of
the parties, writ petition is taken up for hearing and final disposal, at this
stage itself.

4. Challenge is laid in this writ petition to the show cause notice dated

12.09.2022, whereby proceedings under Section 43 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 [in short, “2015 Act”] were sought to be initiated.

4.1. These are penalty proceedings initiated by the concerned officer against the petitioner for alleged failure to disclose foreign income/assets.

5. Mr Salil Kapoor, who appears on behalf of the petitioner, has taken us through the record, as presently made available to the court.

5.1 The record reveals that the petitioner was in employment of Vodafone Idea Ltd. till February 2021.

5.2 In and about August 2018, Vodafone Idea Ltd., (earlier known as Idea Cellular Ltd.) according to the petitioner, merged with Vodafone India Ltd.

5.3. The petitioner claims that he received stock options from the parent company i.e., Vodafone Group PLC.

6. The record also seems to indicate that in the relevant period, i.e., Assessment Year (AY) 2018-19, the petitioner had in his income tax return set forth the details of the Employee Share Option Plan [in short, “ESOP”] received by him. For this purpose, our attention has been drawn to Form 16 and Form 12BA, which are appended on page 57 and 60 of the case file respectively.

7. The value of the stock options, which was included in the taxable income of the petitioner, was pegged at Rs 34,74,022/-. Mr Kapoor says that the tax at source was deducted by Vodafone India Ltd.

8. To be noted, the returned income of the petitioner for the relevant period, i.e., AY 2018-19, was pegged at 1,98,02,130/-; the gross income from salary (which included the value of the ESOP, i.e., Rs 33,52,224/-) as

disclosed in the return, was Rs 1,79,37,973/-.

9. Thus in sum, it is contended by Mr Kapoor on behalf of the petitioner, that there was no undisclosed foreign income or assets and therefore, the provisions of the 2015 Act have been wrongly triggered.

10. We may also note that this inquiry *vis-à-vis* the petitioner, as per the record which is made available to us, has been going on since 27.02.2019, when summons under Section 131(1A) of the Income Tax Act, 1961 [in short, “1961 Act”] were issued.

11. The petitioner claims that he has filed not one, but three responses, setting out the details sought by the respondent/revenue. In this regard, reference is made to the replies dated 06.03.2019, 12.03.2019 and 05.04.2019, appended on pages 71, 79 and 81 of the case file.

12. The record also shows that a summon was issued, once again, to the petitioner after nearly three years on 31.01.2022, under Section 131(A) of the 1961 Act; which was also replied to by the petitioner on 11.02.2022.

13. Insofar as the 2015 Act is concerned, notice, in the first instance, under Section 8 of 2015 Act was issued on 11.07.2022, which was replied to by the petitioner on 16.08.2022.

14. The impugned show cause notice, as indicated above, was issued on 12.09.2022. A reply to the same has been filed, which is dated 07.10.2022.

15. Therefore, given the fact that the matter is at the stage of show cause notice, we are of the view that the best way forward would be to direct the concerned statutory authority to adjudicate the impugned show cause notice.

16. Accordingly, the writ petition is disposed of with the following directions:

- (i) The concerned statutory authority will adjudicate the impugned show cause notice dated 12.09.2022, having regard to the response dated 07.10.2022 and the earlier replies which have been placed on record and referred to hereinabove.
- (ii) The adjudication will be undertaken as expeditiously as possible, though not later than eight (8) weeks from the date of receipt of a copy of this judgement.
- (iii) The concerned authority, however, before proceeding further, will issue notice to the petitioner and grant him and/or his authorized representatives, personal hearing in the matter.
- (iv) The concerned authority will, thereafter, pass a speaking order.
- (v) While dealing with the petitioner's response, the concerned authority will, specifically, deal with the issue raised before the court, which is that it has no jurisdiction in the matter, as there is no income or asset which the petitioner had not disclosed.
- (vi) In case the order so passed in the matter is adverse to the interest of the petitioner, the same shall not be given effect to for a period of eight weeks, which will commence from the date of receipt of the copy of the speaking order by the petitioner.
17. Parties will act based on the digitally signed copy of the judgment.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

JANUARY 13, 2023 /r