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

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Date of decision: 17.02.2023

+ **W.P.(C) 2115/2023 & CM APPL. 8006/2023**

ALANKAR APARTMENT PVT LTD Petitioner
Through: Mr Anand Kiran Chaudhary, Adv.

versus

ASSISTANT COMMISSIONER OF INCOME TAX
CIRCLE 1(1) Respondent
Through: Mr Sanjay Kumar, Sr. Standing
Counsel with Ms Hemlata Rawat,
Adv.

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)

1. Issue notice.
- 1.1 Mr Sanjay Kumar accepts notice on behalf of the respondent/revenue.
2. In view of the directions that we propose to pass, Mr Kumar says that no counter-affidavit is required to be filed at this stage.
3. Accordingly, the writ petition is taken up for hearing and final disposal, at this stage itself.
4. This writ petition concerns Assessment Year (AY) 2017-18. The petitioner, by way of the instant writ action, has laid challenge to the notice dated 23.05.2022 issued under Section 148A(b) of the Income Tax Act, 1961 [in short "Act"].

5. Besides this, challenge is also laid to the order dated 30.07.2022 passed under Section 148A(d) as well as the consequent notice of even date i.e., 30.07.2022, issued under Section 148 of the Act.

6. The principal allegation *qua* the petitioner is, that it has failed to disclose, fully and truly, information with regard to statutory liabilities.

6.1 This allegation is based on a comparison of the statutory liabilities which accrued up until 31.03.2016 and stood enhanced as on 31.03.2017.

7. What is not in dispute, is that as on 31.03.2016, the statutory liabilities of the petitioner were pegged at Rs. 8,51,65,846/- which stood enhanced to Rs. 11,64,73,919/- on 31.03.2017. Based on the difference between these two figures, which is Rs. 3,13,08,073/-, the respondent/revenue allege, that income to that extent has escaped assessment.

8. We have, on record, the reply dated 23.11.2019 filed by the petitioner in response to a notice issued under Section 142(1) of the Act. The said notice is dated 23.08.2019. A perusal of the notice and reply would show, that, *inter alia*, a query with regard to this very aspect was raised, when scrutiny assessment *vis-à-vis* the petitioner was on.

9. The petitioner, at that stage itself, had furnished information to the following effect:

(i) One, the statutory liabilities amounting to Rs. 11,64,73,919/- had been paid and liquidated.

(ii) Second, the petitioner had not claimed deduction *qua* these statutory liabilities.

10. In sum, the argument was, that Section 43B of the Act was not applicable, given these circumstances.

11. We notice, that in the Section 148A(d) order i.e., the order dated

30.07.2022, the defense taken by the petitioner that the statutory liability stood liquidated, as has been noticed. However, after having noticed the response of the petitioner, the Assessing Officer (AO) reached a conclusion, without dealing with the defense raised by the petitioner.

12. For the sake of convenience, paragraph 8 of the said order, and the conclusion reached by the AO in the said paragraph are extracted hereinafter:

“8. The assessee further submitted that the company has duly declared its statutory liability as on 31.03.2016 of Rs. 11,64,73,919/- which were subsequently paid. These are as per books of accounts. These are as per audited balance sheet filed with the dept. In the note no. 6 of the Audited Financials under the head “Other Current Liabilities” statutory liabilities have been duly reflected, it is Rs. 8,51,65,074/- as on 31.03.2016 and Rs. 11,64,73,919/- as on 31.03.2017. It even furnished copy of the challans showing that such liabilities on account of TDS were paid in the subsequent financial year that is between the period 24.05.2017 to 07.07.2017.

The TDS Payable, service tax payable is not claimed as a deduction therefore no disallowance can be made for the same. Further even the related expenses for which TDS has been deducted which was payable as on 31.03.17 as above, were not claimed an expenses in the P&L Account but were shown under the head “work in progress” which were subsequently capitalized.

9. It is observed that the assessee has not fully paid the statutory liabilities which are accumulating in the balance sheet. The same has to be considered as part of receipts if they are not paid by the due date as per the provisions of section 43B of the Income Tax Act.

10. In light of the above facts and on the basis of material available on records, it is decided that the case of M/s.

***ALANKAR APARTMENT PVT LTD, PAN (AAACA0091N)** is a fit case for issuing notice u/s 148 of the I.T. Act, 1961 for A.Y 2017-18”.*

13. In our opinion, this is not a satisfactory disposition of the response filed by the petitioner; in particular, having regard to the fact that the petitioner claims that relevant evidence in the form of challans was placed, both at the time of initial scrutiny assessment and thereafter.

14. Accordingly, the impugned order dated 30.07.2022 passed under Section 148A(d) and the consequent notice of even date i.e., 30.07.2022

issued under Section 148 of the Act are set aside.

15. The AO will carry out a *de novo* exercise. The AO will also accord a personal hearing to the authorized representative of the petitioner. For this purpose, the AO will issue a notice, which will set forth the date and time of the hearing.

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

17. Needless to add, the observations made hereinabove will not impact the merits of the matter.

18. Resultantly, pending application shall stand disposed of.

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

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

FEBRUARY 17, 2023/SA

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

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