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

% *Date of Decision: 27.01.2023*

+ **W.P.(C) 5315/2022 & CM APPL. 55428/2022**

DEEPAK TALWAR

..... Petitioner

Through: Mr Tanveer Ahmed Mir, Mr Vaibhav
Suri & Mr Yash Datt, Advocates.

versus

DEPUTY COMMISSIONER OF INCOME TAX
& ORS.

..... Respondents

Through: Mr Zoheb Hossain, Sr. Standing
Counsel with Mr Vipul Agarwal &
Mr Parth Semwal, Standing Counsels.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MS JUSTICE TARA VITASTA GANJU

ORDER

27.01.2023

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

RAJIV SHAKDHER, J (ORAL):

**W.P.(C) 5315/2022 & CM APPL. 55428/2022 [Application filed on behalf
of the petitioner seeking interim relief]**

1. The substantive prayers made in the writ petition W.P.(C) 5315/2022
read as follows:

*“a) Direct the Respondents to provide and supply to the Petitioner,
the complete details, documents, annexures/information etc. of all the
foreign references/requisitions sent to foreign countries/foreign tax
authorities, private individuals and entities/corporate concerns based
out of foreign jurisdictions which have been requisitioned by the
Respondents along-with their corresponding replies so received qua
the petitioner.*

b) Direct the Respondents to allow the petitioner to inspect the entire/ complete records of the respondents qua the petitioner regarding the assessment and re-assessment proceedings conducted for the assessment order dated 31.12.2019 pertaining to assessment years 2011-2012, 2012-2013, 2013-2014, 2014-2015, 2015-2016, 2016-2017, 2017-2018 specifically in regard to requisition of documents, information qua the petitioner form all the foreign destinations sent till date and replies so received.”

2. The substantive prayer made in CM APPL. 55428/2022 reads as follows:

“a) Stay the operation and effect of the assessment orders passed on 31.12.2019 for the assessment years 2011-2012, 2012-2013, 2013-2014, 2014-2015, 2015-2016, 2016-2017 and 2017-2018 and consequently stay the appeal proceedings pending before the Ld. CIT (A), Delhi-27.”

3. Since the counter-affidavit on behalf of the respondents/revenue was not filed in time, a hard copy of the same has been handed over in court today. We are informed that a copy of the same has also been served on Mr Tanveer Ahmed Mir, who appears on behalf of the petitioner.

3.1 The Registry will scan and upload the counter-affidavit filed on behalf of the respondents/revenue so that it remains embedded in the case file.

4. As would be evident from the prayers made in the writ petition, the essential grievance of the petitioner is that he is not privy to the information, documents and material, which are in possession of the respondents/revenue.

5. According to the petitioner, the material, documents and information, which is available with the respondents/revenue, whether relied upon or not, will impact his appeal *qua* the assessment order(s) dated 31.12.2019 passed *vis-à-vis* in the Assessment Year (AY) 2011-12 to AY 2017-18.

6. Briefly, the backdrop in which the aforementioned assessment

order(s) dated 31.12.2019 came to be passed, is as follows:

6.1. The petitioner was subjected to a search and seizure action in and about 22.06.2016 and thereafter, statements of the petitioner were recorded; which, the petitioner claims were retracted on 15.12.2016.

6.2. The record also seems to suggest that petitioner was served with notices issued under Section 142 and 153A of the Income Tax Act, 1961 [in short, “the Act”] between 23.08.2017 and 25.04.2019. The petitioner avers that on 14.05.2019, he had filed a detailed reply, in which, essentially, two objections were articulated.

(i) First, the period of limitation for conduct of assessment in terms of Section 153B(1)(a) and (b) had expired.

(ii) Second, there was no incriminating material found *qua* the petitioner, either at his residence or otherwise during the search and seizure action. In support of this plea, the petitioner had relied upon the judgment of the coordinate bench of this court rendered in *CIT vs Kabul Chawla*, (2016) 380 ITR 573.

6.3. The aforementioned objections of the petitioner were rejected by respondent no.1. on 07.12.2019.

7. The record presently available with us shows that a notice under Section 142(1) of the Act, dated 14.12.2019 was served on the petitioner, calling upon him to furnish accounts and documents, concerning companies referred to in the annexures appended to the said notice.

7.1. The petitioner on 17.12.2019, appears to have filed a response to the notice dated 14.12.2019 issued under Section 142(1) of the Act. *Inter alia*, in his reply, the petitioner sought documents and information, in the backdrop of it coming to light that the respondents/revenue had made

multiple references to different authorities located abroad. The articulation in this behalf is contained in paragraph 3(b) of the reply dated 17.12.2019.

8. It is the petitioner's grievance that the Assessing Officer (AO), without furnishing the material and information, proceeded to pass the assessment order(s) on 31.12.2019 under Section 143(3), read with Section 153A of the Act.

8.1. According to the petitioner, additions have been made by the AO amounting to Rs. 318,32,40,068/-, which has resulted in a demand amounting to Rs. 173,68,07,090/- being raised against him.

9. It is not in dispute that the petitioner has taken recourse to a statutory remedy and has, accordingly, lodged an appeal before the Commissioner of Income Tax (Appeals) [in short, "CIT(A)"].

9.1. The record shows, something which is not in dispute, that the said appeal is pending consideration.

10. Since, according to the petitioner, documents were not furnished, he was constrained to move to Court by way of the instant writ petition.

11. The application to which we have made a reference above, seeks a stay of the operation of the assessment order(s) dated 31.12.2019.

12. The counter-affidavit filed on behalf of the respondent/revenue is accompanied by certain documents, including a copy of the index containing the list of documents which have been filed in criminal complaints lodged against the petitioner.

12.1 As noted above, the counter-affidavit, along with documents appended thereto, have been furnished to Mr Mir.

13. A perusal of paragraph 23 of the counter-affidavit is indicative of the fact that because the documents involved are voluminous they could not be

collated, and hence, the said exercise would take some time, according to the affiant.

14. We may point out that, insofar as Relied Upon Documents (RUDs) are concerned, Mr Hossain says they have been furnished. However, Mr Hossain seeks to cover his bases by submitting that, if some RUDs have not been furnished, the same will be furnished within the shortest possible time.

14.1 Mr Hossain says this exercise will be completed within the next twelve (12) weeks.

15. Insofar as the documents which are in possession of the respondents/revenue and have not been relied upon, Mr Hossain says that there is no legal obligation on the part of the respondents/revenue to furnish the same.

15.1. Mr Mir takes an objection to this stand of the respondents/revenue, and, in support of his plea, relies upon on the following judgements:

(i) ***T. Takano vs. Securities and Exchange Board of India and Another*** (2022) 8 SCC 162;

(ii) ***Reliance Industries Limited vs. Securities and Exchange Board of India and Others*** 2022 SCC OnLine SC 979.

15.2. Mr Hossain says that the aforementioned judgments are distinguishable.

16. Given the foregoing facts, we are of the view that the best course forward would be to direct the CIT(A) to take a decision in the matter with regard to the documents which, although, are in possession of the respondents/revenue, have not been relied upon.

16.1. However, before CIT(A) proceeds further, a list of those documents will be placed on record, whereupon, the petitioner would have an

opportunity to make a submission, as to the relevance of those documents for the purposes of prosecuting petitioner's appeal.

16.2. Needless to state, the objections of the department will be taken into account and considered by the CIT(A).

16.3. The parties and/or their authorized representatives will appear before CIT(A).

16.4. Needless to state, the CIT(A) will deliberate on the aspect indicated above before proceeding further. However, the CIT(A) will not pass a piecemeal order; the order will be composite, which will deal with the aforesaid aspect as well as the merits of the appeal.

17. Accordingly, the writ petition and the pending application i.e., CM APPL. 55428/2022 are disposed of, in the aforesaid terms.

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

RAJIV SHAKDHER
(JUDGE)

TARA VITASTA GANJU
(JUDGE)

JANUARY 27, 2023 / ha