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

% **Date of Decision: 03.10.2023**

+ **W.P.(C) 11687/2023 & CM APPL. 45616/2023**

WONDER BRICKS

..... Petitioner

Through: Mr Pramod Kumar Agarwal , Adv.

versus

PRINCIPAL CHIEF COMMISSIONER OF INCOME
TAX DELHI

..... Respondent

Through: Mr Sanjeev Menon, Standing
Counsel.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE GIRISH KATHPALIA

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

RAJIV SHAKDHER, J. (ORAL):

1. On 04.09.2023, we had heard the matter at some length and etched out, broadly, the grievance articulated on behalf of the petitioner. For convenience, the relevant parts of the order dated 04.09.2023 are set forth hereafter:

“2. This petition concerns Assessment Year (AY) 2014-15.

2.1 The preliminary ground on which the petitioner seeks to assail the assessment order dated 13.04.2023 is that although the show cause notice dated 31.03.2023 gave time to the petitioner/assessee to file a reply by 05.05.2023 15:49 hours, the impugned assessment order has been passed before that date.

3. Mr Sanjeev Menon, learned standing counsel, who appears on behalf of the respondent/revenue, says that he has not been served with a copy of the case papers.

4. Counsel for the petitioner will furnish a copy of the case papers to Mr Menon via email, in the course of the day.



5. *Mr Menon says that he will return with instructions. If the instructions are received to resist the petition, a counter-affidavit will be filed before the next date of hearing.*
6. *List the matter on 03.10.2023.*
7. *Meanwhile, no precipitate action will be taken against the petitioner/assessee.”*
2. As would be evident, we had granted Mr Sanjeev Menon, learned standing counsel, who appears on behalf of the respondent/revenue, time to return with instructions. It was made clear that if instructions are received to resist the writ petition, a counter-affidavit will be filed in the matter.
3. A counter-affidavit has not been filed. Therefore, the assertions made by the petitioner remain unrebutted.
4. Given the circumstances, the assertions made by the petitioner have to be accepted.
5. Clearly, the record shows that the impugned assessment order was passed before the time to file a reply to the show cause notice expired. The show cause notice was issued on 31.03.2023, giving time to the petitioner/assessee to file its reply by 05.05.2023 (15:49 hours), as noted on 04.09.2023. The impugned order was passed on 13.04.2023.
6. In these circumstances, we believe that the best way forward would be to set aside the assessment order.
7. It is ordered accordingly.
8. Liberty is, however, given to the Assessing Officer (AO) to pass a fresh assessment order, *albeit*, in accordance with the law.
9. To hasten the proceedings, the petitioner/assessee will file a reply to the show cause notice dated 31.03.2023 within four (4) weeks of receipt of the copy of the order passed today.



10. The present writ petition is disposed of in aforesaid terms.
11. Interim order dated 04.09.2023 shall stand vacated.
12. Consequently, CM No. 45616/2023 is closed.
13. Parties will act based on the digitally signed copy of the order.

(RAJIV SHAKDHER)
JUDGE

(GIRISH KATHPALIA)
JUDGE

OCTOBER 03, 2023/ssc