



\$~3

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

% **Date of decision: 05.09.2023**

+ **W.P.(C) 11385/2023**

RAKESH KUMAR MOHINDROO Petitioner

Through: Mr Parth Davar, Advocate.

versus

INCOME TAX OFFICER WARD 59(3) DELHI AND ANR

..... Respondents

Through: Mr Abhishek Maratha, Sr. 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)

CM No.44307/2023

1. Allowed, subject to just exceptions.

W.P.(C) 11385/2023 & CM APPL. 44306/2023 [*Application filed on behalf of the petitioner/appellant seeking interim relief*]

2. Issue notice.

2.1 Mr Abhishek Maratha, learned senior standing counsel, accepts notice on behalf of the respondent/revenue.

3. Mr Maratha says that given the directions that we propose to pass, he will not be filing a counter-affidavit in the matter and will rely on the record, as is presently available with the court . Accordingly, 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) 2019-20.

5. *Via* the instant writ petition, the challenge is laid to the following notices and order:

(i) Notice dated 23.02.2022, issued under Section 148A(b) of the Income Tax Act, 1961 [in short, “the Act”].

(ii) Order dated 26.03.2023, passed under Section 148A (d) of the Act.

(iii) Consequential notice of even date i.e., 26.03.2023, issued under Section 148 of the Act.

6. The principal allegation which is levelled against the petitioner is that he is a beneficiary of an accommodation entry provided by one Mr Bajrang Lal Periwal, *via* a company going by the name BKR Capital Pvt. Ltd. [hereafter referred to as, “BKR”].

7. It is alleged that the petitioner has taken a fictitious loan amounting to Rs.40,00,000/- from BKR.

7.1 The respondents/revenue suggest that BKR is controlled by Mr Bajrang Lal Periwal. In support of this allegation, respondents/revenue rely upon a statement made under oath by Mr Bajrang Lal Periwal, under Section 132(4) of the Act.

8. The record shows that pursuant to the issuance of the notice dated 23.02.2023, under Section 148A(b) of the Act, the petitioner had filed a reply on 03.03.2023.

8.1 The sum and substance of the reply filed by the petitioner was that he had not taken any loan from BKR but, instead, deposited Rs.40,00,000/-



with BKR, and funds for this purpose were drawn from his savings bank account, maintained with the Defence Colony, New Delhi Branch of Standard Chartered Bank. The details of the savings bank account were also provided in the reply dated 03.03.2023.

9. It is important to note that, in support of his stand, the petitioner has furnished copies of the Income Tax Return (ITR) of BKR, confirmations/ledgers of accounts and, and bank statements.

10. We have perused the reply dated 03.03.2023 filed on behalf of the petitioner. The reply is not happily worded, in as much as the petitioner has made the following assertion:

“The said receipt of Rs. 40,00,000/- does not represent loan taken from M/s BKR Capital Private Limited as stated in the said notice u/s 148A but only repayment of a deposit made by the assessee to the said company on 11.07.2017.”

10.1. This assertion is followed by the next sentence which reads as follows:

“The said deposit was advanced by the assessee from his savings bank account No. 52610011762 held with Standard Chartered Bank, Defence Colony, New Delhi.”

10.2 The first part of this paragraph does not align with the second part, however what does come through if both parts are read together is the petitioner had, in fact, deposited Rs.40,00,000/- with BKR and not received the said amount by way of loan as alleged.

11. The Assessing Officer (AO), though, was not persuaded, and went on to conclude in the order dated 26.03.2023, passed under Section 148A(d) of the Act that income amounting to Rs.40,00,000/- had escaped assessment without providing the necessary basis in support of the application.

12. In our view, the best way forward would be to dispose of the writ



petition with the following directions:

(i) Since the principal allegation levelled against the petitioner is that he had availed a fictitious loan of Rs.40,00,000/- from BKR, the AO will furnish the relevant material which will establish the said allegation.

(ii) In case any fresh material is furnished, the petitioner will be given an opportunity to respond to the same.

(iii) The AO will, thereafter, accord personal hearing to the petitioner and/or his authorized representative and only thereafter proceed to frame the assessment order.

12.1. It is ordered accordingly.

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

14. Accordingly, the pending application shall stand closed.

RAJIV SHAKDHER
JUDGE

GIRISH KATHPALIA
JUDGE

SEPTEMBER 5, 2023/v

Click here to check corrigendum, if any