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

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Date of decision: 08.05.2023

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W.P.(C) 5870/2023

AMIT GUPTA

..... Petitioner

Through: Mr Abhimanyu Jhamba, Ms Thonpinao Thangal, Ms Hatneimawi and Mr Shivam Prashar, Advocates.

versus

ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE 34-1 NEW DELHI AND ANR.

..... Respondents

Through: Mr Sanjeev Menon, Sr. Standing Counsel for respondent/ revenue.

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 APPL. 23022/2023

1. Allowed, subject to just exceptions.

W.P.(C) 5870/2023 & CM APPL. 23021/2023 [Application filed on behalf of the petitioner seeking interim relief]

2. Issue notice.

2.1 Mr Sanjeev Menon, Sr. Standing Counsel, accepts notice on behalf of the respondent/ revenue.

3. In view of the order that we propose to pass, Mr Menon says that he does not wish to file a counter-affidavit in the matter and he will argue based on the record presently available to the Court. Therefore, with the consent of the counsels for 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. The principal allegation levelled against the petitioner is that he has entered into sham transactions for sale of the subject goods with two entities i.e., VKC Nuts Pvt. Ltd. and M/s Arham Foods.

6. It is alleged that the petitioner has shown bogus sales *vis-à-vis* the aforementioned entities.

6.1 The cumulative value of the purported bogus sales, according to the respondent/revenue, is Rs. 1,72,27,917/-. The bogus sale amount which is attributed to VKC Nuts Pvt. Ltd. is Rs. 45,64,284/-, while insofar as, M/s Arham Foods is concerned, the amount is pegged at Rs. 1, 23,37,174 /-.

6.2 The respondent/ revenue allege that the petitioner has returned the money in cash to the aforementioned entities.

7. The record shows that petitioner was issued two notices under Section 148A(b) of the Income Tax Act, 1961 [in short, “the Act”]. These notices are dated 02.03.2023 and 06.03.2023.

7.1 It appears that the petitioner filed a reply dated 12.03.2023, whereby the petitioner refuted the allegations made against him. The petitioner, apparently, furnished the relevant underlying documents for the relevant period which included invoices, e-way bills and the bank statements.

8. The Assessing Officer (AO) while passing the impugned order has adverted to the reply filed by the petitioner, wherein apart from the merits, the petitioner had also sought an opportunity for being granted a personal hearing in the matter.

8.1 The AO, however, appears to have not dealt with the assertions made by the petitioner in defence.

9. The approach of the AO is evident on perusal of paragraph 5.8 of the order dated 25.03.2023 passed under Section 148A(d) of the Act. For the sake of convenience, the observations made by the AO in the said paragraph are set forth hereafter:

“5.8 As per the discussion held in the above paragraphs, it is observed that M/s. VKC Nuts Private Limited and M/s. Arham Foods has booked purchases from M/s. Amit International in its regular books of accounts



while in actuality these are bogus purchases as the purchase consideration amounting to Rs. 45,64,284/- and Rs. 1,23,37,174/- has been received back by M/s. VKC Nuts Private Limited and M/s. Arham Foods in cash respectively. During the post search investigation, M/s VKC Nuts Private Limited and M/s. Arham Foods were asked to explain the above mentioned transactions under taken by it with M/s. Amit International. Thus, M/s. Amit International has booked sales to M/s. VKC Nuts Private Limited and M/s. Arham Foods in its regular books of accounts while in actuality these are bogus sales as the sale consideration amounting to Rs. 45,64,284/- and Rs. 1,23,37,174/- have been given back to M/s. VKC Nuts Private Limited and M/s. Arham Foods in cash respectively.”

10. As noted above, although the petitioner asked for personal hearing in the matter, the same, was, clearly, not provided.
11. Mr Menon, however, says since the reply has been filed, it would suffice. It is Mr Menon’s say that the no oral hearing has to be granted.
12. According to us, this is not only contrary to the provisions of Section 148A(b) of the Act, but also contrary to the clarificatory circulars issued by the CBDT dated 01.08.2022 and 22.08.2022.
13. We may also note that insofar as the petitioner is concerned, he has furnished the relevant documents to demonstrate that it was a genuine sale. Since it was the respondent/revenue’s allegation that petitioner returned the sale consideration, in the form of cash, to the aforementioned entities [an assertion which the petitioner denies based on documents] the onus shifted, and therefore, the AO will be required to furnish some material to show that the allegation was *prima facie*, tenable.
14. This apart, as observed hereinabove, there has been an infraction of the principles of natural justice.
15. Thus, for the foregoing reasons, we are inclined to set aside the impugned order dated 25.03.2023 passed under Section 148A(d) and the consequential notice of even date i.e., 25.03.2023 passed under Section 148 of the Act. It is ordered accordingly.
- 15.1 Liberty is, however, given to the AO to carry out a *de novo* exercise and pass a fresh order, after having accorded an opportunity of hearing to the petitioner and/or his authorised representative.



16. We may, however, clarify that the observations made hereinabove will not come in the way of the AO passing an order on merits. The observations have been made only in the context of dealing with the infraction of the right of petitioner to be heard before an order such as one which is impugned is passed *qua* him.

17. Needless to state, the AO will pass a speaking order and deal with material placed on record by the petitioner. The AO will also supply the material/information which is in his possession but not furnished to the petitioner up until now.

17. The writ petition stands disposed of in the aforesaid terms.

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

**RAJIV SHAKDHER
(JUDGE)**

**GIRISH KATHPALIA
(JUDGE)**

8th MAY, 2023 / v

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