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

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Date of decision: 08.05.2023

+ **W.P.(C) 5906/2023**

RAHUL ANAND

..... Petitioner

Through: Mr Shashank Sharma, Advocate.

versus

**ASSISSTANT COMMISSIONER OF INCOME TAX,
INTERNATIONAL TAX, 1(1)(1), DELHI**

..... Respondent

Through: Mr Pratyaksha Gupta, Advocate.

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. 23096/2023

1. Allowed, subject to just exceptions.

W.P.(C) 5906/2023 & CM APPL. 23095/2023[*Application filed on behalf of the petitioner seeking interim relief*]

2. Issue notice.

2.1 Mr Pratyaksha Gupta, Standing Counsel, accepts notice on behalf of the respondent/revenue.

3. Given the directions we propose to pass, Mr Gupta says that he does not wish to file a counter-affidavit in the matter and he will rely upon the record presently available with the court. Therefore with the consent of counsels for



the parties, the writ petition is taken up for hearing and final disposal at this stage itself.

4. The petitioner has assailed the order dated 13.04.2023 passed under Section 148A(d) of the Income Tax Act, 1961 [in short, “the Act”]. In addition thereto, challenge is also laid to the consequential notice dated 14.04.2023, issued under Section 148 of the Act.

5. Counsel for the petitioner says that, apart from anything else, there has been a breach of principles of natural justice.

6. It is the submission of the counsel for the petitioner that, although a reply dated 30.03.2023 was filed, the impugned order proceeds on the basis that no reply was filed.

7. It is pointed out by the counsel for the petitioner that the petitioner has been a non-resident since 2006-07. It is also averred that the notice dated 04.03.2023 issued under Section 148A(b) was received, physically, at the residence of the petitioner’s parents on 24.03.2023.

8. We may note that the notice dated 04.03.2023 issued under Section 148A(b) required the petitioner to file a reply “on or before 21.03.2023 by 2 P.M.”

9. Given this position, the petitioner claims that a request for adjournment was made on 25.03.2023, requesting for an accommodation to furnish a response by 30.03.2023. As noted above, the petitioner claims that a reply was filed and uploaded on 30.03.2023.

10. Since, primarily, the petitioner has raised a grievance with regard to the breach of principles of natural justice; inasmuch as the reply filed by him was not being taken into account- in our view, the best way forward, would



be to set aside the impugned order, with liberty to the Assessing Officer (AO) to carry out a *de novo* exercise.

11. Mr. Pratyaksha Gupta, standing counsel, who appears on behalf of the respondent/revenue cannot but accept the position that the reply, for whatever it is worth, had to be taken into account while passing the impugned order.

12. Accordingly, the impugned order and the consequential notice issued under Section 148 are set aside.

12.1. Liberty is, however, given to the AO to pass a fresh order.

12.2 While passing the order, the AO will take into account the reply filed by the petitioner.

12.3 Needless to add, the AO will also grant personal hearing to the petitioner and/or his authorised representative.

13. The writ petition stands disposed of in the aforesaid terms. The pending application shall stand closed.

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

(RAJIV SHAKDHER)
JUDGE

(GIRISH KATHPALIA)
JUDGE

8th MAY, 2023 / v