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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Decision delivered on: 19.05.2023

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W.P.(C) 6761/2023

SHRI MANGE RAM JAIN

..... Petitioner

Through: Mr Kapil Goel, Advocate

versus

INCOME TAX OFFICER, WARD 36 (1), DELHI Respondent

Through: Mr Sanjay Kumar, 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. 26444/2023

1. Allowed, subject to just exceptions.

W.P.(C) 6761/2023 and CM APPL. 26445/2023 [Application filed on behalf of the petitioner seeking interim relief]

2. Issue notice.

2.1 Mr Sanjay Kumar, learned senior standing counsel accepts notice on behalf of the respondents/revenue.

3. Mr Kumar says that in view the directions that we propose to pass, he does not wish to file a counter-affidavit in the matter and he will argue the matter based on the record presently available with the court. Therefore, with the consent of the counsels for parties, the writ petition is taken up for hearing and final disposal of the case at this stage itself.

4. This writ petition concerns Assessment Year (AY) 2019-20.

5. The petitioner has assailed the show-cause notice dated 31.03.2023 issued under Section 148A(b) of the Income Tax Act, 1961 [in short, "the Act"].

5.1 In addition, thereto, challenge is also laid to the order dated 17.04.2023 passed



under Section 148A(d) of the Act and the consequential notice of even date i.e., 17.04.2023 issued under Section 148 of the Act.

6. The principal grievance of the petitioner is that after the Assessing Officer (AO) had issued the notice dated 31.03.2023 under Section 148A(b) of the Act, granting the petitioner time to furnish documents in defence of the allegations levelled against him, on or before 10.04.2023, the petitioner attempted to comply with the deadlines stipulated therein.

7. It is the petitioner's case that he attempted to upload the necessary documents by 10.04.2023. However, the petitioner claims that he failed in his attempt as the designated portal was closed.

7.1 In support of his plea that the designated portal was closed, reference is made to the grievance raised by the petitioner. In this behalf, our attention has been drawn to Annexure B, appended at page 21 of case file.

8. Evidently, this aspect went unnoticed when the AO passed the impugned order dated 17.04.2023. In paragraph 4 of the said order, the AO notes that, despite opportunity being given to the petitioner to respond to the notice issued under Section 148A(b) of the Act, no response was filed.

8.1 Clearly, the AO did not take cognizance of the fact that the petitioner had made an attempt to upload his response, which did not fructify as the designated portal was closed.

9. Therefore, according to us, the best way forward would be to set aside the impugned order and notices and have the AO carry out a *de novo* exercise.

9.1 It is ordered accordingly.

10. The AO will, however, be at liberty to carry out a fresh proceeding. 10.1 For this purpose, the petitioner is granted a further two (2) weeks to file his response. As a measure of abundant caution, the petitioner will file his response not only on the portal, but also with the Jurisdictional Assessing Officer (JAO).

10.2 Once the response to the notice under Section 148A(b) of the Act issued to him is received, the AO will grant personal hearing the petitioner and/or his authorized



representative. The AO will issue a notice to the petitioner fixing the date and time of hearing.

11. Needless to add, the AO will pass speaking order, a copy of which will be furnished to the petitioner.

12. The writ petition is disposed of, in the aforesaid terms. Consequently, the pending application shall stand closed.

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

**(RAJIV SHAKDHER)
JUDGE**

**(GIRISH KATHPALIA)
JUDGE**

MAY 19, 2023/as

[Click here to check corrigendum, if any](#)

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