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

% *Date of decision: 23.05.2023*

+ **W.P.(C) 7079/2023**

ASHOK JAIN

..... Petitioner

Through: Mr Gaurav Gupta and Mr
Ashok Jain, Advocates

versus

ASSESSMENT UNIT INCOME TAX DEPARTMENT NEW
DELHI

..... Respondent

Through: Mr Gaurav Gupta, Sr Standing
Counsel with Mr Puneet
Singhal and Mr Shivendra
Singh, Jr 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 APPL. 27499/2023

1. Allowed, subject to just exceptions.

W.P.(C) 7079/2023 & CM No. 27498/2023 [*Application filed on
behalf of the petitioner seeking interim relief*]

2. Issue notice.

3. Mr Gaurav Gupta, learned senior standing counsel, who appears
on behalf of the respondent/revenue, accepts notice.

4. Given the direction that we propose to pass, Mr Gupta says that
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.

5. Therefore, with the consent of the counsel for parties, the writ



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

6. The record shows that the principal allegation against the petitioner is that he is involved in evasion of Value Added Tax (VAT), and that he has used bogus documents in this context.

7. According to the respondent/revenue, income amounting to Rs. 86,45,876/-, which was otherwise chargeable to tax, has escaped assessment. The petitioner, on the other hand, says that the allegation made against him does not relate to evasion of VAT, but VAT refund.

8. It is thus the assertion of the petitioner that VAT refund can never lead to escapement of income.

9. Be that as it may, record shows that a show cause notice dated 13.03.2023 was issued to the petitioner proposing variation in income. Evidently, petitioner sought extension of time, and made a request in that behalf, *via* communication dated 22.03.2023.

10. The petitioner sought accommodation on the ground that he would require time to gather and/or collate the relevant material.

11. As is evident, the Assessing Officer (AO), without dealing with the request of the petitioner for accommodation, has passed the impugned assessment order dated 12.04.2023, under Section 147 read with Section 144B of the Income Tax Act, 1961 [in short, “the Act”].

12. There was clearly a violation of principles of natural justice. The petitioner was entitled to know whether or not his request for accommodation was being entertained.

13. Having regard to the aforesaid circumstances, the impugned



assessment order is set aside. The AO is, however, given liberty to pass a fresh order, if deemed necessary, *albeit* in accordance with the law.

14. The petitioner will file a reply to the notice issued under Section 148A(b) of the Act, within the four weeks of receipt of copy of the judgment.

15. Mr Gupta will ensure that access is given to the petitioner to upload the reply *via* the designated portal.

16. Needless to say since we have not examined the merits of the case, nothing stated hereinabove will impact the merits of the matter.

17. In view of the fact that the impugned assessment order has been set aside, all consequential notices, i.e., demand and penalty notice, will collapse.

18. The above captioned writ petition is disposed of, in the aforesaid terms.

19. Pending interlocutory application shall stand closed.

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

RAJIV SHAKDHER
(JUDGE)

GIRISH KATHPALIA
(JUDGE)

MAY 23, 2023/as

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

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