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

% **Date of Decision: 27.09.2023**

+ **W.P.(C) 12813/2023**

GUDWALA AND SONS AND ANOTHER ACTING THROUGH
COMPETENT PARTNER Petitioner

Through: Mr Kapil Goel with Mr Sandeep
Goel, Advs.

versus

ASSISTANT COMMISSIONER OF INCOME TAX CENTRAL
CIRCLE 4, DELHI Respondent

Through: Mr Sunil Agarwal, Sr. Standing
Counsel with Mr Shivansh B. Pandya,
Jr. Standing Counsel and Mr Utkarsh
Tiwari, Adv.

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. 50469/2023

1. Allowed, subject to just exceptions.

W.P.(C) 12813/2023 & CM No. 50468/2023 *[Application filed on behalf of
the petitioner seeking interim relief]*

2. Issue notice.

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

3. In view of the directions that we intend to pass, Mr Agarwal 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.

3.1 Therefore, with the consent of the learned counsel 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. The record shows that the allegations levelled against the petitioners/assesseees are that they are beneficiaries of accommodation entry provided by one Mr Ankit Jain, proprietor of Rishabh Trading Company.

6. The value of the accommodation entry adverted to in the notice dated 23.03.2023, issued under Section 148A(b) of the Income Tax Act, 1961 [in short, "Act"], has been pegged at Rs. 1,15,10,016/-.

7. It is not in dispute that the petitioners/assesseees filed two replies i.e., dated 31.03.2023 & 05.04.2023 to the aforementioned notice.

7.1 In the reply, the petitioners/assesseees took the stand that they had purchased goods worth Rs. 70,10,016/- from Rishabh Trading Company and also sold goods worth Rs. 45 lakhs to the said entity.

8. The writ petitioners/assesseees asserted that both sets of transactions are genuine and not bogus as alleged by the Assessing Officer (AO).

9. The AO, however, after noting the aforementioned stand taken on behalf of the petitioners/assesseees, proceeded to continue with the reassessment proceedings by rejecting the objections raised in the replies filed by the petitioners/assesseees.

10. However, interestingly, the order dated 20.04.2023 passed under Section 148A(d) of the Act, inadvertently or otherwise, has escalated the figure to Rs. 1,15,10,0016/-. The figure is referred to in paragraph ten (10) of the said order.

11. Mr Kapil Goel, learned counsel, who appears on behalf of



petitioners/assesseees, says that apart from the fact that the AO had no material available with him to trigger the reassessment proceedings against the petitioners/assesseees, the proceeding is flawed as the approval granted, if any, to the AO regarding commencement of the reassessment proceedings has not been submitted to the petitioners/assesseees up until now.

11.1 Furthermore, in support of his plea that there was no material available, Mr Goel has drawn our attention to the statement dated 07.11.2019 made by Mr Ankit Jain under oath, which is relied upon by the AO.

11.2 Based on the statement, Mr Goel argues that there is no reference whatsoever to the petitioners/assesseees.

12. Furthermore, Mr Goel also draws our attention to the reply dated 05.04.2023, submitted on behalf of the petitioners/assesseees, which *inter alia* alludes to the fact that Mr Ankit Jain had submitted an affidavit whereby, he has averred that the transaction entered into with the petitioners/assesseees were genuine.

13. Mr Goel says that the petitioners/assesseees had offered to present Mr Ankit Jain before the AO for examination with regard to the transaction entered into with the petitioners/assesseees.

14. On the other hand, Mr Agarwal submitted that the AO would have the relevant material available with him which persuaded him to trigger the reassessment proceedings against the petitioners/assesseees.

15. In support of this plea, Mr Agarwal has drawn our attention to the answer furnished by Mr Ankit Jain in response to query no.18.

15.1 Since the statement was made by Mr Ankit Jain in Hindi, a translated



copy of the statement, in English, has been placed on record by the petitioners/assesseees.

15.2. We have been taken through the statement made in Hindi as well as the translated copy of the statement.

15.3 We may note that the English translation of the statement made in Hindi, in particular the translation made 1. with regard to the query no. 18 is in line with what was stated in Hindi.

15.4. Thus, for the sake of convenience, the query put to Mr Ankit Jain and the answer given by him are set forth hereafter:

“Ques18. A difference of Rs.16,29,623/- has been found between the Cash in hand presented by you and the actual Cash in hand. Please explain the difference.

Answer: Yes, I agree that a difference of Rs.16,29,423/- has been found in my cash in hand. The reason for this difference is the out of book cash sale.

That means there is no entry recorded in my books from these sales. Since in our business, it is called selling without invoicing.”

16. Notably, at this juncture, this was the only part of the statement that Mr Agrawal could rely upon in support of his stance that there was material available to establish under-invoicing being carried on.

16.1 At the highest, what can be stated in favour of the respondents/revenue is that Mr Ankit Jain has accepted the fact that cash transactions amounting to Rs. 16,29,423/- were made outside the books of account. Significantly, there is, however, no reference to the petitioners/assesseees.

17. Mr Agarwal has not been able draw our attention to any part of the statement which refers to the petitioners/assesseees.

17.1 Furthermore, Mr Agarwal, in our view, cannot but accept that the documents evidencing approval, if any, granted for commencement of



reassessment proceedings against the petitioners/assesseees ought to have been furnished to the petitioners/assesseees.

18. Thus having regard to the aforesaid facts and circumstances, we are of the view that best option available to the AO would be to go back to the drawing board and if deemed necessary, reinitiate the proceedings against the petitioners/assesseees, *albeit*, as per law.

19. Accordingly, the impugned notices and order are set aside with liberty to the AO to recommence the proceedings, having regard to what is stated hereinabove.

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

21. Consequently, the pending interlocutory application shall stand closed.

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

RAJIV SHAKDHER, J.

GIRISH KATHPALIA, J.

SEPTEMBER 27, 2023/R.Y

Click here to check corrigendum, if any