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

% *Decision delivered on: 09.08.2023*

+ **W.P.(C) 10513/2023 & CM Nos.40780-81/2023**

DHRUV SURI

..... Petitioner

Through: Mr Nitin Gulati and Ms Reena
Gandhi, Advs.

versus

INCOME TAX OFFICER, WARD 30(5),
DELHI & ANR.

..... Respondents

Through: Mr Shlok Chandra, Sr Standing
Counsel with Ms Priya Sarkar,
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 No.40781/2023

1. Allowed, subject to just exceptions.

**W.P.(C) 10513/2023 & CM No.40780/2023 [Application filed on behalf of
the petitioner seeking interim relief]**

2. Issue notice.

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

3. Given the directions that we propose to issue, Mr Chandra says that
he does not wish to file a counter-affidavit and he will argue the matter



based on the record presently available with the court.

3.1 Therefore, with the consent of learned counsels for the parties, the matter is taken up for hearing and final disposal at this stage itself.

4. This writ petition concerns Assessment Year (AY) 2016-17.

5. The record shows that the Assessing Officer (AO) has triggered reassessment proceedings against the petitioner, as he had entered into high value transactions, *inter alia*, concerning the subject immovable property.

6. Mr Nitin Gulati, who appears on behalf of the petitioner, does not dispute the fact that the subject immovable property was sold by the petitioner to two persons, i.e., Mr Sriram Jayaraman Subramanian and Ms Kamakshi Sriram Iyer for a cumulative amount of Rs.1,20,25,000/-.

6.1 According to Mr Gulati, the petitioner had purchased the subject immovable property in 2010 for Rs.75,45,096/-.

6.2 It is also Mr Gulati's submission that the purchase of the subject property was partly funded through a loan taken from ICICI Bank amounting to Rs.67,26,641/-. The balance amount, we are told, was sourced through savings available with the petitioner.

6.3 The petitioner appears to have furnished the loan statement to the AO.

7. According to the petitioner, he earned capital gains amounting to Rs.12,42,429/-. Besides this, the petitioner claimed that he also earned interest of Rs.419/- on the amount available in the account maintained with HDFC Bank.

8. Thus, the petitioner's assertion was that he had not earned any other income, apart from the amounts indicated hereinabove, from sale of property and interest.



9. On a perusal of the order dated 23.03.2023 passed by the AO under Section 148A(d) of the Income Tax Act, 1961 [in short, “Act”], it emerges that he has taken umbrage due to the petitioner’s failure to submit the sale deed/agreement to sell, certificate of transfer of rights by the builder and/or the possession letter.

9.1 Mr Gulati says that had these documents been asked for, they would have been submitted by the petitioner,

10. A perusal of the order passed under Section 148A(d) of the Act shows that, according to the AO, he appears to be moving to the position that income amounting to Rs.1,19,40,919/- has escaped assessment.

11. We may note that Mr Gulati says that if the acquisition price of the subject property is taken into account, the escaped income will be less than Rs.50,00,000/-.

11.1 In this context, Mr Gulati also submits that the reassessment proceedings have been commenced beyond three (3) years from the end of relevant AY, i.e., AY 2016-17, and, therefore, are time-barred.

12. We would have accepted the submission of Mr Gulati, but for the fact that, concededly, the petitioner did not file his Income Tax Return.

13. Therefore, according to us, the matter may require further inquiry.

14. That said, before the AO proceeds further, he will give an opportunity to the petitioner to submit further documents in support of his defence (to which, we have made a broad reference hereinabove).

15. The AO will also deal with the stand of the petitioner that the subject property which was sold, was bought in and about 2010, at the price indicated hereinabove.



16. Therefore, the AO will, in any event, deal with Mr Gulati's submission that notwithstanding the fact that Return of Income(ROI) had not been filed, the escaped income would not exceed Rs.50,00,000/-.
17. This exercise will be undertaken before passing an assessment order.
18. On being queried, Mr Gulati concedes that the ROI has not been filed pursuant to the consequential notice issued under Section 148 of the Act.
19. The petitioner is given leeway to file the ROI within the next thirty (30) days.
20. The writ petition is disposed of, in the aforesaid terms. Consequently, the pending interlocutory application shall stand closed.
21. Parties will act based on the digitally signed copy of the judgment.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

AUGUST 9, 2023

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