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

% *Decision delivered on: 16.08.2023*

+ **W.P.(C) 10784/2023 & CM Nos.41806-07/2023**

JITENDER KUMAR Petitioner
Through: Ms Surbhi Chandra, Adv.

versus

INCOME TAX OFFICER
WARD 35(5) DELHI & ANR. Respondents
Through: Mr Vipul Agrawal, Sr Standing
Counsel with Mr Gibran Naushad and
Ms Sakshi Shairwal, Standing
Counsels.

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.41807/2023

1. Allowed, subject to just exceptions.

W.P.(C) 10784/2023 & CM No.41806/2023 [*Application filed on behalf of
the petitioner seeking interim relief*]

2. Issue notice.

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

3. Given the direction that we propose to issue, Mr Agrawal 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 counsel 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. This writ petition is directed against the order dated 17.04.2023 passed under Section 148A(d) of the Income Tax Act, 1961 [in short, “Act”].

6. The principal grievance of the petitioner is that the reassessment proceeding has been triggered against him concerning, one, Mr Raj Singh, i.e., the original assessee who expired on 24.06.2016.

7. It is the petitioner’s case that the transactions in issue do not concern him and, therefore, the reassessment proceedings could not have been triggered *qua* him vis-à-vis the deceased assessee.

8. We may note that there are three transactions referred to in the impugned order.

8.1 First, the deposit of cash of Rs.20,79,000/- in the saving bank account held in ICICI Bank.

8.2 Second, the transaction relating to sale of land whereby the deceased assessee supposedly received Rs.6,18,33,334/- against the said transaction which was deposited in his bank account.

8.3 Third, the penalty on cash transaction of Rs.4,99,930/-.

9. According to Ms Surbhi Chandra, who appears on behalf of the petitioner, the subject land *qua* which inquiry sought to be made and Rs.6,18,33,334/- was received by the deceased assessee was sold by him during his lifetime.



10. Ms Chandra says that the petitioner is the nephew and not a direct descendent of the deceased assessee.

11. In sum, Ms Chandra says that the petitioner has had nothing to do with the impugned transaction and does not represent the estate of the deceased assessee.

12. Mr Agrawal, on the other hand, has taken us through the impugned order.

12.1 The Assessing Officer (AO) in the impugned order has adverted to two parcels of land.

13. According to the AO, his inquiries have revealed that on 17.04.2015, Mr Raj Singh before his death had gifted one parcel to the petitioner and sold the other one *qua* which the aforementioned consideration was received, i.e., Rs.6,18,33,334/-.

14. The parcel of land which was gifted to the petitioner as per the AO's inquiries ad-measured 12 Bighas 10 Biswas and was located in Village Khera Kalan, Delhi.

14.1 Insofar as the land which was sold by Mr Raj Singh, it admeasured 10 Bighas 12 Biswas and was also located in Village Khera Kalan, Delhi.

15. It appears that the documents that emerged during the inquiries made by the AO, which are, broadly, referred to hereinabove, and in the order passed under Section 148A(d) were never put to the petitioner.

16. Given this position, we are of the view that the best way forward would be to set aside the impugned order with liberty to the AO to give an opportunity to the petitioner to respond to the documents which have emerged upon inquiries carried out by the AO.



17. The AO will also ascertain as to who is the beneficiary of the money which was received upon sale of the aforementioned land.
- 17.1 For this purpose, the AO will issue a notice to the petitioner which will indicate the date and time of hearing.
18. Liberty will be given to the petitioner to file a reply and place on record any documents which he wishes to rely upon.
19. Needless to add, the AO will pass a speaking order; a copy of which will be furnished to the petitioner.
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 judgment.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

AUGUST 16, 2023

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