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

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Date of decision: 19.05.2023

+ **W.P.(C) 6751/2023**

PKS BUILDMART PVT LTD

..... Petitioner

Through: Mr Piyush K. Kamal, Advocate.

versus

INCOME TAX OFFICER & ANR.

..... Respondents

Through: Mr Aseem Chawla, Sr. Standing Counsel with Ms Prathistha Chaudhary and Mr Aditya Gupta, Advocates for revenue.

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. 26403/2023

1. Allowed, subject to just exceptions

W.P.(C) 6751/2023 & CM APPL.26402/2023 [*Application filed on behalf of the petitioner seeking interim relief*]

2. Issue notice.

2.1 Mr Aseem Chawla, senior standing counsel, accepts notice on behalf of the respondents/revenue.



3. In view of the directions that we propose to pass Mr Chawla says that he does not wish to file a counter-affidavit and that he will argue based on the record presently available with the court. Therefore, with the consent of counsels 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 petitioner has assailed notice dated 27.03.2023 issued under Section 148A(b) of the Income Tax Act, 1961 [in short, "Act"]. [hereinafter referred to as the "first notice"].

5.1 Besides this challenge is also laid concerning notice dated 30.03.2023 issued under Section 148A(b) of the Act. [hereafter referred to as the "second notice"].

5.2 In addition, thereto, the petitioner has assailed the notice dated 31.03.2023 issued under Section 148 of the Act. [hereafter referred to as the "third notice"]

6. Counsel for the petitioner says that insofar as the first notice is concerned, compliance was to be made on or before 03.04.2023.

7. It is also pointed out that this notice was accompanied by an Annexure, wherein the allegation made against the petitioner was that it had entered into a transaction amounting to Rs.50 lakhs with a company going by the name Lenient Consultant Pvt. Ltd., which was a non-descript entity and was managed and controlled by an entry provider i.e., one, Mr Deepak Agarwal.

7.1 This transaction, according to the respondents/revenue, as per the information contained in the said Annexure, took place in Financial Year (FY) 2018-19 [AY 2019-20].



8. Counsel for the petitioner points out that the second notice sought compliance from the petitioner on or before 31.03.2023. Our attention was drawn to the Annexure appended to this notice, which states as follows:

“The earlier notice issued u/s 148A(b) of the I.T. Act, in your case dated 27/03/2023 shall be treated as withdrawn”

9. Immediately thereafter, i.e., on 31.03.2023, the petitioner was served with the third notice, which, as indicated above, was dated 31.03.2023 and was issued under Section 148 of the Act.

10. Counsel for the petitioner says that the respondents/revenue have suddenly taken a U-turn, and, straightaway, initiated proceedings under Section 148 of the Act.

10.1 In other words, while, in the first instance, the regime under Section 148A of the Act was triggered, this route was given up, on the ground that a search had been conducted under Section 132 of the Act.

10.2 Counsel for the petitioner submits that the petitioner has not been subjected to any search under Section 132 of the Act concerning the AY in issue. It is also submitted that the petitioner was unaware of the search carried out against another person who is linked to the petitioner.

11. Mr Chawla submits that the course of action adopted by the AO was correct. It is also Mr Chawla’s contention that, in view of the AY involved, in the matters concerning search, the AO would, straightaway, issue a notice under Section 148 of the Act.

11.1 In this context, Mr Chawla says that since the date of search is on a day past 01.04.2021, and thus, recourse has been taken by the AO to the



provisions of Section 148 of the Act.

11.2 Furthermore, Mr Chawla has drawn our attention to page 59 of the case file, which, *inter alia*, indicates that on 17.11.2021, search under Section 132 of the Act was carried out against Mr Pradeep Indra Prasad Agrawalla (the founder of Galaxy Group) and two entry providers, namely, Mr Deepak Agarwal and Mr Himanshu Verma.

12. Unfortunately, page 59 is a document appended to the first notice issued under Section 148A(b) of the Act. As noted above, this notice is dated 27.03.2023. The said notice has been recalled by the AO *via* the second notice dated 30.03.2023.

12.1 We would assume that the notice, along with the annexure stands withdrawn. The reason that we have reached this conclusion is that the third notice which is dated 31.03.2023, which was issued under Section 148 of the Act, simply states as follows:

“I have information that a search was initiated under Section 132 of the Act in your case or in the case of the person in respect of which you are the assessable under the Act on the date 17.11.2021.”

13. In the notice, there is no clue as to who is the person who was searched, which resulted in triggering the reassessment proceedings against the petitioner. The notice, to say the least, is vague.

14. In these circumstances, we are inclined to allow the writ petition and quash the impugned notices.

14.1 It is ordered accordingly.

15. Liberty is, however, given to the AO to take the next steps in law, if deemed necessary.



17. The pending interlocutory application shall also stand closed.
18. Parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

MAY 19, 2023 / tr

