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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 21.07.2023

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W.P.(C) 7185/2023 & CM APPL.27971/2023

RIYA GANGWANI

..... Petitioner

Through: Mr Shrey Chakravorty with Ms Ms
Rupali Prasad and Ms Aishwarya
Singh, Advs.

versus

ASSISTANT COMMISSIONER OF INCOME TAX,
CIRCLE 49(1), DELHI & ORS.

..... Respondents

Through: Mr Shailendera Singh, Sr Standing
Counsel with Ms Dacchita Shahi, Mr
Viplav Acharya and Mr Akash
Saxena, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE GIRISH KATHPALIA

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J (ORAL):

1. This writ petition concerns Assessment Year (AY) 2019-20.
2. Issue notice.
- 2.1 Mr Shailendera Singh, learned senior standing counsel, accepts notice on behalf of the respondents/revenue.
3. In view of the direction that we intend to pass, Mr Singh says that no counter-affidavit is required to be filed, and he will rely on the record presently available with the court.
4. *Via* the instant writ petition, the petitioner seeks to assail the following notices and orders:
 - (i) Notices dated 06.03.2023 and 20.03.2023 issued under Section 148A(b) of the Income Tax Act, 1961 [in short, "Act"].



- (ii) Order dated 24.03.2023 issued under Section 148A(d) of the Act.
- (iii) Consequential notice of even date, i.e., 24.03.2023 issued under Section 148 of the Act.

5. It is evident that the petitioner was served with two (2) notices under Section 148A(b) of the Act.

6. The record shows that the petitioner had filed replies *vis-a-vis* both notices.

6.1 A reply *vis-a-vis* the first notice was filed on 16.03.2023.

6.2 Likewise, a reply *vis-à-vis* the second notice was filed on 22.03.2023.

7. The principal allegation against the petitioner is that it has registered fictitious transactions involving purchase of shares.

7.1 It is alleged that the petitioner is a beneficiary of an accommodation entry.

8. The value fixed by the Assessing Office (AO) *qua* these transactions is Rs.27,16,180/-.

9. It is important to note that *via* the second notice dated 20.03.2023 issued to the petitioner, the AO had sought copies of the bank statement, as well as D-MAT account concerning Financial Year (FY) 2018-19 [AY 2019-20].

9.1 The petitioner while filing its reply dated 23.03.2023, had furnished a copy of the bank statement and the D-MAT account.

10. Curiously, while penning down the order dated 24.03.2023 under Section 148A(d) of the Act, the AO in paragraph 5 notes that the petitioner had not responded to the show cause notice issued under Section 148 A(b) of the Act.



10.1 This observation has been made, despite the fact that the first reply dated 16.03.2023, is extracted in the body of the said order. Furthermore, it appears that the bank statement and the D-MAT for the concerned AY have not been noticed.

11. Given this position, without getting into the merits of the matter, we are inclined to set aside the impugned order dated 24.03.2023 passed under Section 148 A(d), and the consequent notice of even date, i.e., 24.03.2023 issued under Section 148 of the Act.

11.1 It is ordered accordingly.

12. That being said, liberty is given to the AO to pass a fresh order, *albeit* after taking into account the reply filed by the petitioner.

13. The AO will also accord personal hearing to the petitioner.

13.1 For this purpose, the AO will also issue notice to the petitioner, indicating therein the date and time of hearing.

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

14.1 The pending application shall stand closed.

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

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

JULY 21, 2023/pmc