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

% *Date of Decision: 21.08.2023*

\+ **W.P.(C) 11071/2023**

LUV IMPEX PRIVATE LIMITED ..... Petitioner
Through: Mr. V. Siddharth, Advocate.

Versus

INCOME TAX OFFICER WARD 15 (1) & ANR. ..... Respondent
Through: Mr Shlok Chandra, Senior Standing Counsel.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MR. JUSTICE ANISH DAYAL

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

RAJIV SHAKDHER, J. (ORAL):

CM APPL. 42933/2023

1. Allowed, subject to just exceptions.

W.P.(C) 11071/2023 & CM Appl.42932/2023 [*Application filed on behalf of the petitioner/assessee seeking interim relief*]

2. Issue notice.

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

3. In view of the directions that we intend to pass, Mr Chandra says that no counter-affidavit is required to be filed, and he will rely on the record presently available with the court.

3.1 Therefore, with the consent of the counsel for the parties, the matter is

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taken up for final hearing and disposal, at this stage itself.

4. This writ petition assails the following notices and orders:

(i) Notice dated 07.03.2023 issued under Section 148A(b) of the Income Tax Act, 1961 [in short, "*Act*"].

(ii) Order dated 28.03.2023 passed under Section 148A(d) of the Act.

(iii) Notice dated 04.07.2023 intimating to the petitioner that the assessment will be completed, in accordance with procedure prescribed under Section 144B of Act.

5. A perusal of the record shows that the allegation against the petitioner/assessee is that it has taken benefit of bogus purchase entries.

5.1 In this regard, the respondent/revenue has referred to four individuals, the details concerning the same are found in paragraph 2 of the order dated 28.03.2023, passed under Section 148A(d) of the Act.

6. The cumulative amount allegedly involved in these bogus purchases has been pegged at Rs.24,31,89,457/-

7. The records also shows that the petitioner filed a reply in part, *albeit*, on 21.03.2023. This reply was considered by the Assessing Officer (AO) while passing the impugned order dated 28.03.2023.

8. Mr. V. Siddharth, who appears on behalf of the petitioner, says that the aspect concerning genuineness of the purchase transactions has been flagged by the AO, by referring to the information which has not been supplied to the petitioner.

9. According to petitioner, this has, in a sense, compromised the defence of the petitioner.

10. Mr Shlok Chandra, learned Standing Counsel, who appears on behalf

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of the respondent/revenue, relies upon the impugned order dated 28.03.2023 to demonstrate that this is a case where the assessment proceeding should be allowed to continue.

10.1 Mr. Chandra, however, cannot but accept that the material based on which the AO has concluded that the transactions in issue are bogus, apparently, was not furnished to the petitioner/assessee.

11. We may note that the rationale provided by the AO is contained in the following paragraphs of the impugned order:

> *"4. Assessee in its reply objected on the proposed action of issuing notice u/s 148 of IT Act and subsequently doing assessment. The objections raised by assessee are discussed as under.*
> *5. Submission made by assessee was perused. But not found tenable. Assessee provided copy of bank statement to substantiate its claim that it was genuine transaction. But it missed the point that, it was never alleged that transactions were done outside banking channel. In fact bogus purchases were made through banking channel and such amount was claimed as expense. Also tax invoices will not prove assessee's case, as information available is that bogus GST refund/ITC claims are being made through such transactions. Moreover these entities did not respond to the summons issued by the office making enquiries or the summons were returned undelivered.*
> *5.1 Further eway bills submitted by assessee were also perused. In the said bills vehicle number is provided, which allegedly has transported the goods to assessee, after purchase. However, after going through these it is found that, certain vehicles like Vehicle No. HR99 ACH0410 does not exist. For certain vehicles, their validity, insurance and national permit is found to be expired on the alleged date when these are used to transport goods. One of such example is HR67 4025, which has allegedly transported goods on 01.11.2018, but its validity was up to 30.09.2016, insurance was valid up to 10.05.2017 and national permit till 02.05.2016.*
> *5.2 Further Swastik Enterprises (Prop. Rahul Khandelwal) had not filed his ITR for AY 2018-19 and 2019-20, while as per GST return it has shown its sales as 42.99 Cr. and 16.38 Cr. respectively. Despite the sales, it has not shown any purchase during the year. Further the said entity was also not found to exist at the given address, at time of enquiry by the office, which provided this information. Thus reply of assesses is not found to be tenable and not accepted."*

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12. In sum, the AO did not consider bank statements and tax invoices to be relevant evidence. Furthermore, a perusal of the petitioner's reply dated 21.03.2023 would show that, although the petitioner furnished certain pieces of information to demonstrate that the transactions undertaken were genuine, the same were not considered by the AO. One such example is a piece of evidence concerning the production of the ledger account of the sellers which appears in petitioner's books of account.

12.1 It also appears that the petitioner placed on record documents to demonstrate that the transactions have been made through a banking channel. For example, in its reply dated 27.03.2023, the petitioner attached bank statements demonstrating payment made to the concerned parties.

12.2 Furthermore, it appears that the petitioner has also placed on record the tax invoices and e-way bills.

13. Despite these documents having been placed by the petitioner/assessee before the AO, the AO concluded that the petitioner had nothing to submit by way of a proper explanation regarding the transactions in issue.

14. In our view, if AO had material to demonstrate that the sellers were dubious or non-existent, that material/information should have been put to the petitioner.

15. Having failed to do so, in our opinion, the defence of the petitioner, in a sense, got compromised. One such aspect is captured in paragraph 5.1 of the impugned order. In this paragraph, there is reference to the non-existence of the vehicle No. HR99ACH0410. If the AO had relevant information based on which he concluded that the said vehicle did not exist, that information should have also been put to the petitioner.

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16. Therefore, according to us, the best way forward would be to set aside the impugned order, with liberty to AO to pass a fresh order.

16.1 It is directed accordingly.

17. The impugned order 28.03.2023 is set aside, with liberty to the AO to pass a fresh order.

17.1 However, before the AO embarks on this journey, he will furnish the relevant information/material available with him to the petitioner.

17.2 Thereafter, the AO will accord an opportunity to the petitioner to file a further response. Once such response is filed, the AO will issue another notice, fixing the date and time for according a personal hearing in the matter.

18. The writ petition is disposed of, in the aforesaid terms.

19. Needless to add, we have not examined the merits of the matter and therefore, nothing stated hereinabove will impact the final determination that may be made by the AO while passing a fresh order under Section 148A(d) of the Act.

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

RAJIV SHAKDHER, J

ANISH DAYAL, J

AUGUST 21, 2023/RK

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