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

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Date of decision: 24.05.2023

+ **W.P.(C) 7168/2023**

NAGANDAR KUMAR SHARMA Petitioner
Through: Mr Mohit Gupta with Mr Varun
Nischal, Advocates.

versus

PRINCIPAL CHIEF COMMISSIONER OF
INCOME TAX, DELHI & ORS. Respondents
Through: Mr Sunil Agarwal, Sr Standing
Counsel with Mr Shivansh B. Pandya,
Standing Counsel along with Mr
Utkarsh Tiwari, Adv.

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.27932/2023

1. Allowed, subject to just exceptions.

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2. Issue notice.

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

3. Given the direction that we propose to issue, Mr Agarwal says that he



does not wish to file a counter-affidavit in the matter, and he will argue the matter, based on the record presently available with the Court.

4. Therefore, with the consent of the counsel for parties, the writ petition is taken up for hearing and final disposal, at this stage itself.

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

6. The principal allegation against the petitioner is, that against purchases, foreign outward remittance had been made, which was not reported. It is alleged, that on this count, income amounting to Rs.1,12,79,027/- had escaped assessment.

7. Learned counsel for the petitioner says, that this very aspect concerning foreign outward remittance was examined in the scrutiny assessment, framed on 09.12.2018 under Section 143(3) of the Income Tax Act, 1961 [in short, "Act"].

8. Counsel for the petitioner says, that the petitioner had disclosed foreign outward remittance amounting to Rs.21,11,99,745/- out of which remittance amounting to Rs.3,83,38,070/- was adverted to in the prescribed form i.e., Form 15CA.

8.1 It is submitted by the counsel for the petitioner, that the Assessing Officer (AO) had scrutinized the petitioner's case, and thereafter, concluded that no addition was required to be made with regard to the aspect concerning foreign outward remittance.

9. It is required to be observed, that when the notice dated 31.03.2023 was issued to the petitioner under Section 148A(b) of the Act, it was alleged that foreign outward remittance amounting to Rs.4,96,17,097/- had escaped assessment. It is only after the petitioner filed his reply dated 03.04.2023,



bringing to the fore the aspect concerning the scrutiny assessment order dated 09.12.2018, that this figure was scaled down to Rs.1,12,79,027/-.

9.1 This aspect of the matter is evident upon perusal of paragraph 5 of the order dated 19.04.2023 passed under Section 148A(d) of the Act. For the sake of convenience, the same is extracted hereafter:

“(i) It is pertinent to mention here that in reply dated 03.04.2023, furnished by the assessee, On perusal of record, it is found that assessment has been completed at income of Rs. 8,55,450/- u/s 143(3) of the Act on dated 09.12.2018. As per assessment order the assessee has already reported remittance of Rs. 3,83,38,070/- which has been verified, but as per INSIGHT Information assessee has received the income or financial transactions amounting to Rs. 4,96,17,097/and as per assessment order remittance of Rs. 3,83,38,070/- (which has been verified).Therefore, the balance income or financial transactions amounting to Rs. 1,12,79,027/ i.e. (Rs. 4,96,17,097/ - Rs. 3,83,38,070/-) has escaped. Further, it is clarified here that relevant information of INSIGHT Portal was provided to the assessee.”

10. We have put to Mr Agarwal, as to how the AO alleged that foreign outward remittance which had not been disclosed, was a figure amounting to Rs.4,96,17,097/-.

11. As is evident from the extract set forth hereinabove, the AO has adjusted against the said figure i.e., Rs.4,96,17,097/- against the reported foreign outward remittance amounting to Rs. 3,83,38,070/-, and thereafter, concluded that the balance amount i.e., Rs.1,12,79,027/- had escaped assessment. There is no discussion on this aspect of the matter.

12. As indicated above, the petitioner has submitted before us, that the entire amount was subject matter of scrutiny. In fact, the amount that was disclosed was far greater than what was indicated by the AO, while issuing



notice under Section 148A(b) of the Act.

13. Given this position, according to us, the best way forward would be to set aside the order dated 19.04.2023 passed under Section 148A(d) of the Act.

13.1 It is ordered accordingly.

14. Consequently, the notice of even date i.e., 19.04.2023 issued under Section 148 of the Act would collapse.

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

16. In case the AO were to trigger fresh proceedings, he will issue notice to the petitioner.

17. The AO will also furnish relevant information, available with him/her to the petitioner, and seek his response to the material that may be furnished.

18. The AO will, thereafter, pass a speaking order, after affording personal hearing to the petitioner and/or his authorized representative.

19. The writ petition is disposed of in the aforesaid terms.

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

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

MAY 24, 2023 / tr