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

% Date of Decision: 24.07.2023

+ **W.P.(C) 9687/2023**

VANDANA GRIHA NIRMAN LIMITED Petitioner
Through: Mr Amit Kaushik, Adv.

versus

INCOME TAX OFFICER, WARD 16(1), DELHI Respondent
Through: Mr Abhishek Maratha, Sr Standing
Counsel with Mr Akshat Singh,
Standing Counsel.

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.37124/2023

1. Allowed, subject to just exceptions.

W.P.(C) 9687/2023 & CM Appl.37123/2023 [*Application filed on behalf of the petitioner seeking interim relief*]

2. Issue notice.

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

3. In view of the directions that we intend to pass, Mr Maratha says that a counter-affidavit need not be filed and that he will rely on the documents presently available with the court.



4. This petition concerns Assessment Year (AY) 2015-16.
5. The principal ground on which the assessment order dated 24.05.2023 and the consequent proceedings initiated thereafter have been challenged by the petitioner, is that the impugned order and the proceedings were initiated against a company which does not exist in the eyes of law.
6. The impugned assessment order refers to an entity going by the name M.A. Market Services Pvt Ltd. [hereafter referred to as “MAMS”].
 - 6.1 The record shows that the said entity, along with others, stood amalgamated with the petitioner-company i.e., Vandana Griha Nirman Limited [hereafter referred to as “VGNL”].
 - 6.2 This is evident on perusal of the order dated 18.11.2022 passed by the National Company Law Tribunal, New Delhi Bench [in short, “NCLT”]. Notably, the order records the presence of the counsel who appeared on behalf of the appellant/revenue before the NCLT.
7. Despite this position, the impugned assessment order has been passed against MAMS. We may note that the impugned assessment order alleges that Topline Fabrics Pvt Ltd [hereafter referred to as, “Topline”], which, according to the Assessing Officer (AO), stood merged with MAMS during Financial Year (FY) 2014-15 [AY 2015-16], provided funds to the tune of Rs.1,70,00,000/- to an entity going by the name Northgate Lithotripter Pvt Ltd [hereafter referred to as, “Northgate”].
 - 7.1 It is alleged that Northgate was involved in money laundering and did not carry out any genuine business transactions.
 - 7.2 The assessment order also notes the stand of the petitioner/assessee, which is that Northgate held 5,78,000 shares of an entity going by the name



Symbolic Finance Investment Pvt Ltd [hereafter referred to as, “Symbolic”] and that out of the said shares, 70,833 shares were sold to Topline at the rate of Rs.240/- per share, the total amount being Rs.1.70 crores.

7.3 It was also the assertion that Topline had sold these shares to another entity going by the name White Mountain Trading Pvt. Ltd. [hereafter referred to as, “WMTPL”] during the same AY when the shares were bought, *albeit*, at the same rate i.e., Rs.240/- per share.

8. The AO, however, was of the view that Northgate could not establish genuineness of the stock purchased by it during its assessment proceedings, and hence, the sale to Topline could not be accepted as an authentic transaction

9. Although what we have noted above are the broad contours of the allegation and the defence emanating from the record, the flaw which the AO committed, was in passing an order in the name of an entity which does not exist, *vis-à-vis* which the respondent/revenue had knowledge.

10. Accordingly, the impugned assessment order dated 24.05.2023 is quashed. Resultantly, the consequential proceedings will collapse.

11. The AO will, however, have liberty to take next steps, in the matter, *albeit*, as per law.

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

13. Pending interlocutory application is closed.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

JULY 24, 2023/pmc