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

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Decision delivered on: 27.03.2023

+ **W.P.(C) 3798/2023 & CM Nos.14812-13/2023**

MANSI AGGARWAL

..... Petitioner

Through: Mr Abhishek Garg, Mr Yash Gaiha
and Mr Ranesh Mankotia, Advs.

versus

INCOME TAX OFFICER, WARD 62(1),
DELHI & ANR.

..... Respondents

Through: Mr Sanjay Kumar, Sr Standing
Counsel with Ms Easha Kadian, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MS. JUSTICE TARA VITASTA GANJU

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

RAJIV SHAKDHER, J. (ORAL):

CM No.14813/2023

1. Allowed, subject to just exceptions.

**W.P.(C) 3798/2023 & CM No.14812/2023 [Application filed on behalf of
the petitioner seeking interim relief]**

2. Issue notice.

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

3. In view of the directions that we propose to pass, Mr Sanjay Kumar

says, that no counter-affidavit is required to be filed in the matter, and that he will argue the matter, based on the record currently available with the Court.

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

4. This writ petition concerns Assessment Year (AY) 2015-16.

5. *Via* this writ petition, challenge has been laid by the petitioner to the order dated 24.11.2022 passed under Section 148A(d) of the Income Tax Act, 1961 [in short, “Act”].

6. It is not in dispute, that a notice under Section 148A(b) of the Act was issued on 11.10.2022, according time to the petitioner to file a reply.

7. The record shows, that the petitioner did file a reply on 17.11.2022. However, the Assessing Officer (AO) while passing the order dated 24.11.2022, did not take the reply into account. The AO has noted, that no reply has been filed.

7.1 To be noted, the initial notice under Section 148 of the Act (i.e., under the old regime) is dated 31.03.2021. The petitioner claims, that this notice was received by her on 01.04.2021.

8. The principal allegation against the petitioner is, that she had entered into financial transactions in equities and derivatives concerning an entity going by the name PMC Fincorp Ltd, worth Rs.1,03,13,276/-, during the period in issue.

9. It is alleged, that the said entity is managed by, one, Mr Rajkumar Modi, who is engaged in facilitating registration of bogus long term capital gains. Thus, it is alleged against the petitioner, that she had earned fictitious capital gains, by showing sale of shares of the aforementioned entity.

10. The petitioner, in her reply, *inter alia*, stated that during the relevant period, although she had sold shares of the aforementioned entity, she had registered short term capital gains, which were offered for tax.

10.1 In support of this plea, Mr Abhishek Garg, who appears on behalf of the petitioner, has drawn our attention to page 91 of the case file. This document is the Income Tax Return (ITR) filed by the petitioner, for AY 2015-16.

11. A perusal of the aforesaid document would show, that the petitioner registered short term capital gains worth Rs.21,03,339/-.

12. The petitioner also avers, that she has paid securities transaction tax on the said transaction.

13. According to us, the AO will have to take into account, the reply and *inter alia*, the defence raised by the petitioner, with regard to the commencement of the reassessment proceedings against her.

14. Accordingly, the impugned order dated 24.11.2022 is set aside. Liberty is, however, given to the AO to carry out a *de novo* exercise.

15. Needless to add, in case the AO seeks to recommence reassessment proceedings, he will furnish the relevant material, if not already supplied, to the petitioner which links the petitioner to the alleged transaction.

16. The AO will also take into account, the defence raised by the petitioner in her reply. If any fresh material is furnished to the petitioner, liberty will be given by the AO to the petitioner, to file a supplementary reply. The AO will also grant a personal hearing to the petitioner and/or her authorised representative.

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

18. Consequently, the pending application shall stand closed.
19. Parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

MARCH 27, 2023

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