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

% *Date of Decision: 31.07.2023*

+ **W.P.(C) 5647/2023, CM Appl.22131/2023 & CM Appl.29131/2023**

VINAY MAHAJAN Petitioner

Through: Mr Sumit Lalchandani, Adv.

versus

INCOME TAX OFFICER, WARD 28(5),
DELHI & ORS.

..... Respondents

Through: Mr Gaurav Gupta, Sr 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)

1. Issue notice.

1.1 Mr Gaurav Gupta, learned senior standing counsel, accepts notice on behalf of the respondents/revenue.

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

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

3. The record shows that on 02.05.2023, a preliminary objection was raised by Mr Gupta, *albeit*, across the bar.

3.1. The preliminary objection was that the writ petition has been filed by Mr Tarun Mahajan, who was a Special Power of Attorney [in short, "SPA"]



holder of the petitioner and that the SPA dated 06.01.2023 did not indicate that Mr Tarun Mahajan had given his acceptance to act as an agent of the writ petitioner.

4. Having regard to this objection, Mr Sumit Lalchandani, who appears on behalf of the petitioner, was directed to take corrective measures in the matter.

4.1 Accordingly, on behalf of the petitioner, the interlocutory application i.e., CM Appl.29131/2023, has been moved. This application refers to another SPA dated 25.05.2023, which bears the acceptance of Mr Tarun Mahajan.

4.2 This SPA also adverts to the fact that Mr Tarun Mahajan had given his oral acceptance to be the petitioner's agent when SPA dated 06.01.2023 was drawn up.

5. Having regard to the fresh document that has been placed on record, we are inclined to accept that Mr Tarun Mahajan has the requisite authority to act on behalf of the petitioner. CM Appl.29131/2023 is, accordingly, disposed of.

6. Insofar as the merits of the matter are concerned, the petitioner, *inter alia*, seeks to assail the assessment order dated 29.03.2023 passed under Section 147, read with Section 144 and Section 144B of the Income Tax Act, 1961 [in short, "Act"] concerning Assessment Year (AY) 2016-17.

7. The principal ground on which the assessment order is assailed is that there has been a breach of principles of natural justice, inasmuch as, although a request was made for grant of personal hearing, the request was not considered by the Assessing Officer (AO).

8. The record shows that the Show-Cause Notice ["SCN"] dated



22.03.2023 was served on the petitioner, proposing variations in the taxable income. *Via* this SCN, the petitioner was granted time to file a response by 11:21 Hrs. on 28.03.2023.

9. The record also shows that the petitioner, on 28.03.2023, had made a request for grant of hearing, *albeit*, via videoconferencing. Furthermore, the petitioner also filed a reply on that very date.

10. Concededly, hearing was granted to the petitioner before passing the impugned assessment order.

11. We may note that the principal allegation against the petitioner is that he is a beneficiary of accommodation entries worth Rs.80,17,541/-. It is alleged that the petitioner has executed fictitious purchase transactions with an entities referred to in the notice dated 31.05.2022, issued under Section 148A(b) of the Act.

12. Mr Sumit Lalchandani, who appears on behalf of the petitioner, says that the petitioner, in the reply, *inter alia*, indicated that the transactions were not purchase transactions, but sale transactions.

13. For the moment, we are not dealing with the merits of the petitioner's defence. We are inclined to set aside the impugned assessment order on the ground that personal hearing was not granted.

13.1 It is ordered accordingly.

14. Consequently, notices of demand and penalty, which are also dated 29.03.2023, will collapse.

15. Liberty is, however, given to the AO to pass a fresh assessment order, after according personal hearing to the petitioner.

16. AO will issue a notice to the petitioner indicating therein the date and time of the hearing.



17. In case the petitioner wishes to file written submissions in the matter, such opportunity will be granted to the petitioner/assessee.
18. Needless to add, the AO will deal with all the contentions raised by the petitioner and, thereafter pass a speaking order, a copy of which will be furnished to the petitioner/assessee.
19. The writ petition is disposed of in the aforesaid terms.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

JULY 31, 2023/pmc