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

% **Decision delivered on: 14.02.2023**

+ **W.P.(C) 1911/2023 & CM APPL. 7264/2023**

SONU MALIK

.....Petitioner

Through: Mr Ankit Totuka and Mr Jitendra
Singh, Advs.

versus

THE ASSESSING OFFICER, WARD 59(6),
DELHI & ANR.

.....Respondents

Through: Mr Abhishek Maratha, Sr. Standing
Counsel.

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.7264/2023

1. Allowed, subject to just exceptions.

W.P.(C) 1911/2023

2. Issue notice.

3. Mr Abhishek Maratha accepts notice on behalf of the
respondents/revenue.

4. Mr Maratha says, that in view of the directions that we intend to pass,
no counter-affidavit is required to be filed.

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

5. This writ petition is directed against the order dated 23.12.2022 passed by the Assessing Officer (AO) under Section 220(6) of the Income Tax Act, 1961 [in short “Act”] concerning Assessment Year (AY) 2020-2021.

6. The impugned order was passed, based on applications dated 16.11.2022 and 05.12.2022 filed by the petitioner, to stay the demand amounting to Rs.7,43,46,066/-.

6.1 The petitioner had asked for stay of demand, and waiver of 20% of the demand. *Via* the impugned order, the AO has scaled down the demand, pending the adjudication of the appeal preferred by the petitioner with the Commissioner of Income Tax (Appeals) [in short “CIT(A)”] to 20% of the aforementioned demand.

7. Accordingly, against the demand amounting to Rs.7,43,46,066/-, the petitioner has been called upon to deposit, for the moment, Rs.1,48,69,213/-. This amount was required to be deposited by 15.01.2023.

8. The impugned order also contains certain other conditions, which are set out in paragraph 4 of the said order.

9. The record shows, that the petitioner has also filed an application with the Principal Commissioner/Commissioner of Income Tax (CIT) *qua* the impugned order dated 23.12.2022. This application appears to have been filed in and about 16.01.2023. [See Annexure P-11 appended on page 162 of the case file].

9.1 We are informed by the learned counsel for the petitioner, that this application is pending adjudication.

10. The record shows, that the demand made against the petitioner emanates from the assessment order dated 24.09.2022, passed under Section

143(3) read with Section 144B of the Act.

11. A perusal of the said order would show, that the petitioner had pegged his taxable income at Rs.47,63,940/-.

12. The AO, *inter alia*, has taken umbrage qua the substantial purchases amounting to Rs.72,27,16,420/- have been made, which as per the enquiries, pertain to proprietorship concerns, which either did not file returns or have filed returns which do not reflect the same position, as is reflected by the petitioner in his returns.

12.1 Based on this, the Assessing Officer (AO) has concluded, that at least purchases worth Rs.55,87,13,094/- were made from bogus entities and non-filers of income tax returns.

12.2 Accordingly, the AO has disallowed bogus purchases, *albeit* to meet the ends of justice, amounting to Rs.6,98,39,136/- [being 12.5% of Rs 55,87,13,094/-].

12.3 The addition has been made, by taking recourse to Section 69C of the Act, on the ground that the said purchases are unexplained.

13. It is in these circumstances, that the assessed income has ballooned to Rs.7,46,03,080/- from the declared taxable income, amounting to Rs.47,63,940/-.

14. Learned counsel for the petitioner says, that apart from the fact that this is a case of a high-pitched assessment, the rate of gross profit applied i.e., 12.5% is not in sync with the historical gross profit which the petitioner has reported and was accepted by the respondents/revenue, in the earlier years.

14.1 For this purpose, our attention has been drawn to page 51 of the case file, wherein the gross profit rate is indicated as 1.06%.

15. We are of the view, that the CIT could consider the aforementioned aspects in the pending application.

15.1 In sum, even if the additions made by the AO on account of purchases are accepted, then surely, there is a case for examining, as to what is the gross profit rate to be attributed to the petitioner, based on the past record.

15.2 If the said gross profit rate is accepted, then, the amount that may have to be deposited by the petitioner, pending the disposal of his appeal, could be adjusted. However, for the moment, we are not expressing any firm views in the matter.

15.3 The CIT will consider these aspects of the matter, without being burdened by the observations made hereinabove.

16. We may also note, that the learned counsel for the petitioner, in support of his case, has relied upon the following judgments:

- (i) *Soul v. DCIT* (2010) 323 ITR 305 (Delhi).
- (ii) *Valvoline Cummins Ltd. v. DCIT & Ors.* (2008) 307 ITR 103 (Delhi).
- (iii) *Bupendra Murji Shah v. DCIT* (2018) 98 taxmann.com 233 (Bombay).
- (iv) *Mrs Kannammal v. Income-tax Officer-Ward-1(1), Tirupur* (2019) 103 taxmann.com 364 (Madras)
- (v) *Principal Commissioner of Income-tax v. Nitin Ramdeoiji Lohia* (2022) 145 taxmann.com 546 (Bombay).
- (vi) *Principal Commissioner of Income-tax v. Shapoorji Pallonji and Co. Ltd.* (2020) 117 taxmann.com 625 (Bombay).

17. However, we make it clear, that till such time the application is disposed of by the CIT, no coercive measures will be taken against the

petitioner.

18. The CIT will dispose of the application within two weeks of receipt of a copy of the judgement.

19. In the event that the order passed by the CIT is adverse to the interests of the petitioner, the petitioner will have liberty to take recourse to an appropriate remedy, *albeit*, as per law.

20. The order, if any, passed adverse to the interests of the petitioner will not be given effect to for a further period of two weeks, to enable the petitioner to take recourse to an appropriate remedy.

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

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

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

FEBRUARY 14, 2023

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[Click here to check corrigendum, if any](#)