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

+ **W.P.(C) 3514/2023**

DISH INFRA SERVICES PVT. LTD.

..... Petitioner

Through: Mr Vivek Sarin with Mr Dibya Prashant Singh, Ms Divyanshi Singh, Mr Satish C. Kaushik and Mr Ajay K. Dubey, Advocates.

versus

ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE 7(1),
DELHI & ANR. Respondents

Through: Mr Vipul Agrawal, Sr. Standing Counsel with Mr Gibran Naushad and Ms Sakshi Shairwal, Jr. Standing Counsels.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MS JUSTICE TARA VITASTA GANJU

ORDER

21.03.2023

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

CM APPL. 13630/2023

1. Allowed, subject to the petitioner filing legible copies of the annexures, at least three days before the next date of hearing.

W.P.(C) 3514/2023 and CM APPL. 13629/2023 [*Application filed on behalf of the petitioner seeking interim relief*]

2. This writ petition concerns Assessment Year (AY) 2018-19.

3. The record shows that, while the complete scrutiny assessment was on, a notice under Section 148A(b) of the Income Tax Act, 1961 [in short, "the Act"] dated 17.03.2022 was issued to the petitioner. [See page 37 of the case file].

3.1 In response to the notice, the petitioner had filed a reply dated 24.03.2022, wherein, *inter alia*, it had been pointed out that the assessment proceedings are on. [See page 573 and page 581].

3.2 The Assessing Officer (AO) passed an order under Section 148A(d) of the Act on 31.03.2022. [See page 120 of the case file].

4. The principal allegation against the petitioner is that it has received bogus invoices from an entity going by the name One Point One Solutions Ltd. (OPO) valued at Rs. 18,52,66,420/-. It is alleged that based on the said bogus invoices, the petitioner had fraudulently claimed Input Tax Credit.

5. On the other hand, the petitioner's assertion is that it has made payment to OPO against Outbound Call Centre Activities rendered by it.

5.1. In support of its stand that the payments were made against genuine services provided by OPO, the petitioner asserts that, *inter alia*, a copy of the agreement dated 22.08.2016, along with addendum dated 22.08.2017, along with invoices and TDS certificates were submitted.

5.2. Furthermore, Mr Vivek Sarin, who appears on behalf of the petitioner, also draws our attention to the lower tax withholding certificate obtained by OPO under Section 197 of the Act. [See Annexure 'P7' appended on page 572 of the case file].

5.3. Mr Sarin, in the course of the hearing, placed before us a hard copy of the notice dated 17.03.2023 issued by the AO, calling upon the petitioner to file its reply within four days i.e., by today (i.e., 21.03.2023).

6. We may note that it is Mr Sarin's submission that the petitioner having been subjected to complete scrutiny, the reassessment proceedings were uncalled for.

7. On the other hand, Mr Vipul Agrawal, senior standing counsel, who appears on behalf of the respondents/revenue, raised several objections including the fact that challenge is laid to the order passed under Section 148A(d) of the Act, which is dated 31.03.2022. Mr Agrawal, thus contends, that the petitioner has approached the court after much delay.

7.1. It is also Mr Agrawal's submission that since the reassessment proceeding was triggered within a span of three years, it should not be interdicted.

7.2 Mr Agrawal goes on to state that, although facially, the order framed under Section 143(3) of the Act is suggestive of the fact that the complete scrutiny was carried out, a careful perusal of the same would show that this aspect of the matter was not, perhaps, examined.

8. We have heard the learned counsels for the parties. In our view, though the petitioner has approached the court after some delay, it appears that the assessment order has not been passed, as yet.

9. As indicated above, a notice dated 17.03.2023 has been served on the petitioner calling upon the petitioner to file its reply by today i.e., 21.03.2023.

10. That apart, in our opinion, the more critical issue is the commencement of reassessment proceedings while the scrutiny assessment proceedings were on.

10.1 The petitioner had taken an objection in that regard, which seems to have escaped the mind of the AO while passing the order under Section 148A(d) of the Act.

11. Furthermore, we find that, apart from the AO replicating what is

stated in paragraph 6 of the notice issued under Section 148A(b) of the Act in the order passed under Section 148A(d) of the Act (which, incidentally, is also contained in paragraph 6 of the said order), there is no discussion with regard to the material furnished by the petitioner.

12. To our minds, these aspects require further deliberation.

13. Accordingly, issue notice.

13.1 Mr Agarwal accepts notice on behalf of the respondents/revenue.

14. Counter-affidavit will be filed within six weeks.

14.1 Rejoinder thereto, if any, will be filed at least five days before the next date of hearing.

15. List the matter on 11.10.2023.

16. Although we have issued notice in the writ petition, the AO will have liberty to continue with the assessment proceedings. However, if any order is passed which is adverse to the interest of the petitioner, the same shall not be given effect to till further directions of the court.

17. For the purposes of good order and record, the Registry will scan and upload the copy of the notice dated 17.03.2023, which was placed before us by Mr Sarin, so that the same remains embedded in the case file.

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

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

MARCH 21, 2023 / tr

W.P.(C) 3514/2023

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

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