

Aditya Aluminium vs Income Tax Officer Ward 63(1), Delhi And ... on 6 February, 2023

Author: Rajiv Shakdher

Bench: Rajiv Shakdher

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) 1504/2023 & CM Appl.5622/2023

ADITYA ALUMINIUM

Through:

Mr Sumit Lalchandani,
Jain & Mr Shivam Yada

versus

INCOME TAX OFFICER WARD 63(1), DELHI AND ANR.

Through: Mr Kunal Shamra, Sr. Standing

Counsel, Ms Zehra Khan, Jr. Stan
Counsel with Mr Shub
Bhattacharya, Advts.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MS JUSTICE TARA VITASTA GANJU

ORDER

% 06.02.2023 [Physical Hearing/Hybrid Hearing (as per request)]

1. Allowed, subject to the petitioner filing legible copies of annexures, at least three days before the next date of hearing. W.P.(C) 1504/2023 & CM Appl.5622/2023[Application filed on behalf of the petitioner seeking interim relief]

2. This writ petition concerns Assessment Year (AY) 2014-15.

3. The record shows, that an assessment order under Section 143(3) of the Income Tax Act, 1961 [in short, "the Act"] was framed on 22.12.2016.

4. The record also shows, that a notice under Section 148 of the Act i.e., under the old regime, dated 31.03.2021 was issued qua the petitioner.

W.P.(C) 1504/2023 page 1 of 3 4.1 This notice facially seems to suggest, that it was digitally signed on 31.03.2021.

5. Furthermore, the record reveals that a reassessment order under Section 147 read with Section 144B of the Act was passed on 30.03.2022.

6. It appears, that on account of the judgment rendered by the Supreme Court in Union of India v. Ashish Agarwal [2022] 444 ITR 1 (SC), a notice dated 31.05.2022 was issued vis-à-vis the petitioner under Section 148A(b) of the Act.
7. Counsel for the petitioner says, that a perusal of the documents appended on pages 62, 63 and 100 of the case file would show, that the notice dated 31.03.2021 was dispatched on 31.03.2021 itself.
8. Furthermore, it is submitted on behalf of the petitioner, that in any event, the respondent no. 1 had been rendered functus officio, as the reassessment order was passed on 30.03.2022.
9. It is in the context of this submission, that the counsel for the petitioner has drawn our attention to the draft order passed by the Assessing Officer (AO) under Section 148A(d) of the Act.
10. A perusal of this order shows, that the AO initially took the position, that this was not a case fit for reassessment, in view of the fact that reassessment order has already been passed on 30.03.2022.
11. We may, however, note that in this order, the AO adverts to the fact that the notice dated 31.03.2021 was "sent and delivered" to the petitioner on 01.04.2021. [See paragraph 4 of the draft assessment order. which is appended on page 121 of the case file (typed copy)].
12. In our view, the matter requires examination.

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13. Mr Kunal Sharma, who appears on behalf of the respondents/revenue, says that he will return with instructions with regard to the first aspect, as to when the notice dated 31.03.2021 was dispatched.
14. As noted above, this is not the only aspect which arises in the matter. The other aspect which arises in the matter is, as to whether the respondent no. 1 had been rendered functus officio, in view of the fact that reassessment order was passed on 30.03.2022.
15. Issue notice.
 - 15.1 Mr Sharma accepts notice on behalf of the respondents/revenue.
16. Counter-affidavit will be filed within the next four weeks. 16.1 Rejoinder thereto, if any, be filed at least five days before the next date of hearing.
17. In the meanwhile, there shall be a stay on the operation of the impugned order and notice till further directions of the Court.

18. List the matter on 03.10.2023.

RAJIV SH

TARA VITASTA G

FEBRUARY 6, 2023 / r

[Click here to check corrigend](#)

W.P.(C) 1504/2023