

Bhagwan Sahai Sharma vs Deputy Commissioner Of Income Tax, ... on 27 January, 2023

Author: Rajiv Shakdher

Bench: Rajiv Shakdher

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 999/2023

BHAGWAN SAHAI SHARMA

.....Petitio

Through: Ms Ananya Kapoor and Mr Sumit L
Chandani, Advocates

versus

DEPUTY COMMISSIONER OF INCOME TAX,

CIRCLE 13-1 & ANR

.....Respond

Through: Mr Sunil Agarwal, Sr Standing
Counsel on behalf of Mr Abhishe
Maratha, Advocate

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORDER

% 27.01.2023 [Physical Hearing/Hybrid Hearing (as per request)]

1. Allowed, subject to just exceptions.

W.P.(C) 999/2023 & CM No.3891/2023[Application filed on behalf of the petitioner seeking interim relief]

2. Issue notice.

2.1 Mr Sunil Agarwal, who appears on behalf of Mr Abhishek Maratha accepts notice on behalf of the respondent/revenue.

3. In view of the directions that we propose to pass, Mr Agarwal says that no counter-affidavit is required to be filed. Therefore, with the consent of the counsel for the parties, the writ petition is taken up for hearing and final disposal, at this stage itself.

4. This writ petition is directed against the notice dated 30.07.2022 issued under Section 148 of the Income Tax Act, 1961 [in short "Act"]. 4.1 In addition thereto, challenge has been laid to the order dated 30.07.2022 passed under Section 148A(d) and the notice dated 08.06.2022 issued under Section 148A(b) of the Act.

5. The impugned notices and order concern Assessment Year (AY) 2014-2015.

6. The record shows, that the principal allegation against the petitioner is, that he is a beneficiary of accommodation entries provided by one Jignesh S Shah. It is alleged, that fictitious loan was accepted by the petitioner amounting to Rs.7,59,50,185/-.

7. Ms Ananya Kapoor, who appears on behalf of the petitioner, has drawn our attention to the fact, that petitioner was subjected to scrutiny assessment under Section 143(3) of the Act.

7.1 In this regard, Mr Kapoor has referred to the order dated 10.05.2016, appended on page 72 of the case file.

8. Furthermore, Ms Kapoor says, that the reply filed by the petitioner to notice issued under Section 148A(b) of the Act made it clear, that he had not entered into any transaction in Financial Year (FY) 2013-2014 with Jignesh S Shah.

9. Besides this, Ms Kapoor also says, that no material/information has been furnished to the petitioner, in support of the allegations levelled against him.

10. A perusal of record, as presently made available to us, does seem to indicate that no material or information has been furnished to the petitioner, in support of the allegations levelled against him. The impugned order only adverts to the fact, that in a search action against Jignesh S Shah and another person i.e., Sanjay Shah, certain information emerged, which seemed to suggest that they were in the business of providing accommodation entries.

11. It is also suggested, that Directors of those companies had filed affidavits, in which the name of the petitioner appeared as one of the beneficiaries of the accommodation entries. It is in this backdrop, that the reassessment proceedings appear to have been triggered against the petitioner. It appears, that the Assessing Officer (AO) has failed to do even the minimum, which is to furnish a copy of the affidavit filed by those Directors.

12. Mr Agarwal, on the other hand, submits that it is quite possible, that the information is in the custody of the AO, which the AO, for whatever reason, has failed to furnish.

13. Given this position, we are inclined to set aside the impugned notices and the order. It is ordered accordingly.

14. Liberty is, however, given to the AO to carry out a de novo exercise. However, before the AO commences any proceedings, he/she shall furnish the relevant information available concerning the subject transaction to the petitioner/assessee.

14.1 The AO will also accord a personal hearing to the petitioner and/or his authorized representative.

15. The writ petition and pending applications are disposed of in the aforesaid terms.

RAJIV SHAKDHER, J TARA VITASTA GANJU, J JANUARY 27, 2023 Aj [Click here to check corrigendum, if any](#)