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

% **Date of Decision: 25.05.2023**

+ **W.P.(C) 7266/2023**

KRISHNA DIAGNOSTIC PRIVATE LIMITED Petitioner
Through: Mr Gaurav Jain, Adv.

versus

INCOME TAX OFFICER WARD 14 3 DELHI Respondent
Through: Mr Abhishek Maratha, Sr Standing
Counsel with Mr Akshat Singh,
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):

CM Appl.28271/2023

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)7266/2023& CM Appl.28270/2023[*Application filed on behalf of the petitioner seeking interim relief*]

2. Issue notice.

2.1 Mr Abhishek Maratha, learned senior standing counsel, accepts notice on behalf of the respondent/revenue.

3. Given the directions that we propose to issue, Mr Maratha says that no counter-affidavit is required to be filed, and he will rely on the record presently available with the Court. Therefore, with the consent of the



counsel for the parties, the matter is taken up for final hearing and disposal, at this stage itself.

4. This writ petition concerns Assessment Year (AY) 2017-18. The allegation levelled against the petitioner via notice dated 19.05.2022 issued under Section 148A(b) of the Income Tax Act, 1961 [in short, “Act”] is, that it had sold an immovable property worth Rs.8 crores, and that capital gains earned had not been disclosed.

4.1 The record shows, that the petitioner filed a response to the aforementioned notice, which is dated 03.06.2022.

4.2 *Inter alia*, the petitioner pointed out, that it had not sold any property, and instead bought the property. The details of the transaction are also provided in the said response.

5. Pertinently, the petitioner had indicated in the reply, that the purchase consideration of subject property was Rs.8 crores, and that tax at source had been deducted at the rate of 1%, which was deposited via the prescribed form i.e., Form 26QB.

5.1 In support of this assertion made in the reply, the copy of Form 26AS was annexed.

6. It is important to note, that prior to the issuance of notice under Section 148A(b) of the Act, the petitioner had also been served a notice under Section 133(6) of the Act. This notice is dated 25.03.2021. The petitioner, it appears, responded to the said notice, and furnished information that had been sought.

7. The Assessing Officer (AO), having realized that the allegation made was grossly erroneous i.e., that the petitioner had not sold the subject property and had instead purchased the same, turned the allegation on its



head.

8. A perusal of the impugned order dated 28.07.2022 passed under Section 148A(d) of the Act shows, that the AO concludes, that income on transaction worth Rs.8,48,00,000/- had escaped assessment. The rationale provided for the same is contained in paragraph 7 of the said order. For the sake of convenience, the same is extracted hereafter:

“7. Reply of the assessee has been considered. Due to certain mistake in the information provided, earlier it was believed that the assessee had sold the immovable property. However, it is now clear that the assessee had indeed purchased the immovable property. The following points are notable in context of the information available on record:

(i) Assessee has though claimed that it had filed reply to the notice u/s 133(6) dated 25.03.2021. Though there is nothing on record to prove that the assessee had filed any reply.

(ii) From the verification made on e-filing portal, it is noted that no form 26 QB has been filed by the assessee showing this particular transaction in AY 2017-18. Therefore, it cannot be ascertained that TDS has been deducted on the said transaction. Also, the assessee has not provided the copy of Form 26QB.

(iii) There is no declaration of this asset (acquired for a total of Rs.8,48,00,000, including stamp duty) in the return of income as is evident from close perusal of the respective columns of Balance Sheet section of the ITR form or the copy of balance sheet uploaded with the Form 3CA/3CD (audit report). Also the Auditor has not reported the said purchase in respective column 34(a) of the Form No.3CD for the year under consideration. It means the acquisition was not disclosed to the auditor either. The payments appearing on page 6 of the registered sale deed indicates that the assessee has made payments via cheques drawn upon HDFC Bank, Fort, Mumbai; HDFC Bank, K.G. Marg, HDFC Bank, Manik Motwani Marg, Mumbai whereas the declared bank accounts include only HDFC Bank, Vivek Vihar. Therefore, the



payments for acquisition of this property are made out of unexplained sources.”

9. Mr Gaurav Jain, who appears on behalf of the petitioner, says that the rationale provided by the AO is flawed for the following reasons:

- (i) The purchase of the subject property was disclosed by the petitioner in its balance sheet.
- (ii) The details of bank account were also provided.
- (iii) Apart from sourcing the consideration from its own funds, loan had also been taken to supplement the purchase consideration.

10. Insofar as the balance sheet is concerned, our attention has been drawn to page 75 of the case file. The details of the bank account are provided on page 87 of the case file.

10.1 Likewise, in support of his plea, that loan had been availed to the extent of Rs.6.75 cores, our attention has been drawn to the certificate issued by HDFC Bank. Reliance in this regard is placed on document marked as Annexure P-9, appended on page 137 of the case file.

11. In our view, these are facts which are material, and could not have been given a short shrift, as has been done by the AO. Mr Jain is right in contending that there was no application of mind by the AO while passing the impugned order dated 28.07.2022 under Section 148A(d) of the Act. Mr Jain is also right in contending that the aforementioned order is not aligned with the notice dated 19.05.2022 issued under Section 148A(b) of the Act.

12. We are also surprised, that the notice under Section 148A(b) was issued on 19.05.2022 wherein, as observed above, the allegation made is that the petitioner had sold the subject property, despite information in that regard being supplied by the petitioner, as far back as on 22.04.2021, against



a notice issued under Section 133(6) of the Act.

13. The petitioner had clearly indicated, that it had purchased the property. The assertion was backed by relevant documents, which for some reason, the AO chose to ignore.

14. We may note, that in support of this plea, Mr Jain has relied on Annexure P-7 appended on page 131 of the case file.

15. Mr Abhishek Maratha, learned senior standing counsel, who appears on behalf of the respondent/revenue, says that the best way forward would be for the AO to revisit the conclusion arrived at in the impugned order, in the light of what has been noted hereinabove.

16. Having regard to the aspects noted hereinabove, we are of the view, that if at all, the AO deems it fit to carry out a fresh exercise, it would be from the stage prior to the issuance of notice under Section 148A(b) of the Act. Clearly, the AO has missed the most crucial part of the transaction, that it was a purchase and not a sale transaction.

17. Accordingly, the impugned order dated 28.07.2022 passed under Section 148A(d) of the Act, and the consequential notice of even date i.e., 28.07.2022 are set aside.

18. Although the petitioner has not made a specific prayer with regard to the notice dated 19.05.2022 issued under Section 148A(b) of the Act, we are of the view, as noted above, that the AO will have to go back, in a manner of speech, to the starting block, and commence from the stage, if at all he chooses to reassess the petitioner, prior to the issuance of the notice under Section 148A(b) of the Act.

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



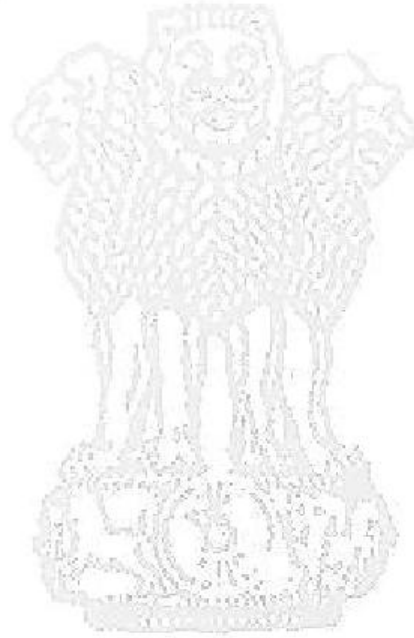
20. Consequently, pending application shall stand closed.
21. Parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

MAY 25, 2023/pmc

HIGH COURT OF DELHI



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