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

% **Decision delivered on: 01.06.2023**

+ **W.P.(C) 8013/2023**

DHIRU REALESTATES PRIVATE LIMITED Petitioner

Through: Mr Sumit K. Batra and Mr Manish Khurana

versus

INCOME TAX OFFICER, WARD 7(1), DELHI Respondent

Through: Mr Zoheb Hossain, Sr Standing Counsel
with Mr Sanjeev Menon, Jr Standing
Counsel for Revenue.

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. 30843/2023

1. Allowed, subject to just exceptions

W.P.(C) 8013/2023 & CM Appl. 30842/2023 [*Application filed on behalf of the petitioner seeking interim relief*]

2. Issue notice.

2.1 Mr Zoheb Hossain, learned senior standing counsel, accepts notice on behalf of the respondents/revenue.

3. Given the directions that we propose to pass, Mr Hossain says that he does not wish to file a counter-affidavit in the matter and he will argue the matter based on the record presently available with the court. Therefore, with the consent of the learned counsels for the parties, the writ petition is taken up for hearing and final disposal, at this stage itself.

4. This writ petition concerns Assessment Year (AY) 2019-20.



5. The principal allegation levelled against the petitioner in the notice dated 29.03.2023 issued under Section 148A(b) of the Income Tax Act, 1961 [in short, "Act"], is that investigation carried out qua the subject bank account had revealed that it registered credit entries to the tune of Rs. 7,26,63,153/-; which remained unexplained and undisclosed.

5.1. In response to the said notice, the petitioner, concededly, filed a reply and took the stand that the information flagged was wrong.

6. The Assessing Officer (AO), while passing the order dated 08.04.2023 under Section 148A(d) of the Act, acknowledges this aspect of the matter. However, from that point, the AO proceeds to make allegations which did not form part of the notice issued under Section 148A(b) of the Act.

7. This aspect of the matter emerges upon perusal of the following paragraphs of the order.

"3. Submission of the assessee is considered and duly examined in the light of information available on records. Assessee has stated that the DDIT(inv.), Unit-2(3), Delhi has mentioned in its enquiry report that there are credits of Rs. 7,26,63,153/- in the bank A/c No. 600700301000573 of assessee company during F.Y. 2018-19, but the statement of DDIT (inv.) is incorrect. The aggregate of credits in the bank account of assessee is only Rs. 99,67,272/-. On perusal of the said bank account statement provided by the assessee, it is seen that the total credits in bank account Lorn 01.04.2018 to 31.03.2019 are Rs. 99,67,272/- which includes credit by transfer of Rs. 61,04,660/- and Rs. 24,17,612/- from M/s Omkam Capital Markets Pvt. Limited and cash deposits of Rs. 14,45,000/- during the year under consideration.

3.1 Although, this contention of the assessee is found correct, however, the Assessee has failed to explain the nature of credit received from M/s Omkam Capital Markets Pvt. Limited amounting to Rs. 61,04,660/- & Rs. 24,17,612/- on 02.07.2018 & 04.07.2018 respectively. Further, it has also failed to give the source of cash deposited in the bank account amounting to Rs. 14,45,000/-.

(wrongly mentioned as 3.1 again)

3.1 Further, an amount of Rs. 85,22,272/- was received from M/s Omkam Capital Markets Private and same was transferred to M/s Neelabh Spinning Mills on very same day. In this regard, assessee has



neither explained the nature of transactions carried out with the above entities nor provided any documentary evidences in this regard. Further, ITR filed by the assessee for A.Y. 2019-20 has been examined and it is found that it has shown revenue from operation to the tune of Rs. 1,92,500/- and total cash & cash equivalent of Rs. 15,582/- only and a nominal income of Rs. 2910/- has been shown for A.Y. 2019-20. Hence there is no economic rationale is noticed against the fund credited/deposited in the bank account of the assessee company during F.Y. 2018-19”.

[Emphasis is ours]

8. Based upon the aforesaid, the AO concluded that Rs.99,67,272/-, which was otherwise income assessable to tax, had escaped assessment. Undoubtedly, the aspects recorded in the order passed under Section 148A(d) of the Act were not put to the petitioner.

9. Therefore, in our view, the best way forward would be to set aside the impugned order and notices, with liberty to the AO to take the next steps in the matter, *albeit*, as per law.

9.1 It is ordered accordingly.

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

(RAJIV SHAKDHER)
JUDGE

(GIRISH KATHPALIA)
JUDGE

JUNE 01, 2023

as

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