(2022) 12 DEL CK 0171

In the Delhi High Court

Case No : Civil Writ Petition No. 17457 Of 2022, Civil Miscellaneous Application No. 55646-47 Of 2022

Lemon Tree Hotels Ltd APPELLANT

Vs

Assistant Commissioner Of Income Tax & Ors RESPONDENT

Date of Decision : 21-12-2022

Acts Referred:
Income Tax Act, 1961 — Section 148, 148A(d)

Citation : (2022) 12 DEL CK 0171

Hon'ble Judges : Rajiv Shakdher, J;Tara Vitasta Ganju, J

Bench : Division Bench

Advocate : Rohit Jain, Aniket D. Agrawal, Samarth Chaudhari, Abhishek Maratha

Final Decision : Disposed Of

Judgement

Rajiv Shakdher, J

CM No.55647/2022

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

W.P.(C) 17457/2022&CM APPL. 55646/2022[Application filed on behalf of the petitioner seeking interim relief]

2. Issue notice.

2.1 Mr Abhishek Maratha accepts notice on behalf of the respondents/revenue.

3. In view of the order that we intend to pass, Mr Maratha says that he does not wish to file a counter-affidavit at this juncture.

4. Thus, with the consent of learned counsel for the parties, the writ petition is taken up for personal hearing and final disposal, at this stage itself.

5. This writ petition is directed against the notice dated 30.06.2021 issued under

Section 148 of the Income Tax Act, 1961 [in short “Act”].

5. In addition thereto, challenge is also laid to the letter/notice dated 02.06.2022, the order dated 30.07.2022 passed under Section 148A(d) of the Act, and lastly the consequent notice of even date i.e., 30.07.2022 issued under Section 148 of the Act.

6. To be noted, the instant writ petition concerns Assessment Year (AY) 2015-2016.

7. A perusal of the record, in particular the reply dated 24.06.2022, filed pursuant to the show-cause notice dated 02.06.2022 discloses that the petitioner had asked for a personal hearing, in the event that the assessing officer chose to proceed further in the matter.

8. Clearly, in this case, a personal hearing was not granted before passing the order under Section 148 A (d); the notice issued under Section 148 of the Act was only consequential.

9. In these circumstances, the order dated 30.07.2022 passed under Section 148 A (d) and the notice of even date i.e., 30.07.2022 issued under Section 148 of the Act are set aside.

10. The matter is remitted to the concerned assessing officer for carrying out a de novo exercise.

10.1 The assessing officer will also grant a personal hearing to the authorized representative of the petitioner.

10.2 In this context, the assessing officer will issue a notice to the petitioner, which will set out the date and time of the hearing.

11. Needless to add, all defences will be available to the petitioner/assessee, as observed in Union of India v. Ashish Aggarwal2022 SCC OnLine SC 543.

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

13. Pending application shall stand closed.

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