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

\+ **W.P.(C) 3292/2023 & CM Nos.12813-14/2023**

BRINDAVAN ENTERPRISES (P) LTD ..... Petitioner

Through: Mr S. Ganesh, Sr Adv. with Mr Alex Joseph, Ms Sonali S.S., Ms Sherin Shajahan and Ms Merin Thampan, Advs.

versus

(1) DEPUTY DIRECTOR OF INCOME-TAX (INVESTIGATION) UNIT & ANR. ..... Respondents

Through: Mr Shailendera Singh, Sr Standing Counsel with Mr Viplav Acharya and Ms Dacchita Shahi, Jr Standing Counsels along with Mr Akash Saxena, Adv. for R-1/Revenue.
Mr Ravi Prakash, CGSC with Mr Farman Ali and Mr Aman Rewaria, Advs. for R-2.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MS. JUSTICE TARA VITASTA GANJU

O R D E R

% **23.03.2023**

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

CM No.12814/2023

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) 3292/2023 & CM No.12813/2023 ***[Application filed on behalf of the petitioner seeking interim relief]***

2. This writ petition is directed against two notices dated 20.04.2020 and 23.02.2023 issued under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 [in short, “2015 Act”].

3. Mr S. Ganesh, learned senior counsel, who appears on behalf of the petitioner, says that the impugned notices are imbued with jurisdictional flaws.

3.1 In this context, Mr Ganesh makes the following broad submissions:

(i) First, since the search was carried out on 28.11.2017, the notices should have been issued within 30 days of expiry of the financial year in which the search was carried out. It is further contended that if the notices, for some reason, could not have been issued within the aforementioned time-frame, then the rigour, contained in paragraph 8 of the Central Board of Direct Taxes' (CBDT) Guidelines dated 23.01.2018, had to be followed. This was not adhered to by the respondents/revenue.

(ii) Second, the allegation against the petitioner is that it is a beneficial owner of the interest in two companies based and incorporated in UAE. It is pointed out that the two companies referred to in the notice dated 23.02.2023 are Innovation Worldwide DMCC [in short, "IWW"] and Transactt Worldwide DMCC [in short, "TWW"]. The allegation is that these two entities are effectively controlled by the members of the Gupta family, i.e., Brijesh Gupta, Rajesh Gupta and Amit Gupta. Mr Ganesh contends that when the provisions of Section 2(11) of the 2015 Act are read with FAQ No.31, which is part of the CBDT Circular No.13/2015 dated 06.07.2015, it would be evident that the beneficial owner can only be an individual. It is crystal clear that insofar as the 2015 Act is concerned a beneficial owner, in respect of an asset, can only be an individual who has provided, directly or indirectly, consideration for the asset for immediate or future benefit, direct or indirect, of himself or any other person.

(iii) Third, the impugned notices dated 20.04.2020 and 23.02.2023 did not bear Document Identification Number (DIN). The result would be that these notices would have to be treated as being *non-est* in the eyes of law. In support of this plea reliance is placed on the CBDT Circular No.14/2019 dated 14.08.2019.

(iv) Fourth, the respondents/revenue cannot take recourse to the provisions of Section 6(3) of the Income Tax Act, 1961 [in short, "1961 Act"]. The respondents/revenue, if at all, would have to find a source, for exercising powers *vis-a-vis* the petitioner, *qua* the Dubai companies, in the 2015 Act.

4. Mr Shailendera Singh, learned senior standing counsel, who appears on behalf of the respondents/revenue, submits that paragraph 8 of the Guideline dated 23.01.2018 would have to be read along with paragraph 7.

4.1 It is Mr Singh's contention that since concurrent jurisdiction was assigned to the concerned officer under 2015 Act, only on 02.12.2019, the notice issued on 20.04.2020 would be within the framework of the said Guideline.

4.2 Furthermore, Mr Singh draws our attention to Section 3 of 2015 Act. According to Mr Singh, it is a charging section, which applies to and brings under its sway, the assessee. The definition of assessee as contained in Section 2(7) of the 1961 Act includes a person. The person, in turn, as defined in Section 2(31) of the 1961 Act, will include a company.

4.3 Insofar as the argument with regard to the impugned notices being a nullity is concerned, Mr Singh submits that the Circular No.19/2019 dated 14.08.2019 is not applicable to communications concerning notices, orders, summons, etc. issued under 2015 Act.

5. We have heard learned counsel for the parties briefly.

6. According to us, the first submission made by Mr Ganesh would require consideration. The reason we say so is the following: although information with regard to the petitioner holding an undisclosed asset outside India was received pursuant to a search as far back as on 28.11.2017, the first impugned notice was issued on 20.04.2020; a date way beyond the timeframe provided in the CBDT Guidelines dated 23.01.2018.

7. *Prima facie*, according to us, the argument advanced by Mr Singh that because concurrent jurisdiction was vested with the concerned officer under 2015 Act on 02.12.2019 and, therefore, notice could be issued 30 days after the end of such year, would result in a situation whereby the respondents/revenue could stretch the timeframe interminably.

8. In our view, which is again *prima facie*, a reasonable timeframe would have to be put in place.

9. Furthermore, in any event, in this case, the provisions of paragraph 8 of the said Guideline, facially does not seem to have been adhered to, to at least, defend the delay in issuing notice dated 20.04.2020.

10. Insofar as the other submissions are concerned, they will require further deliberation.

11. Accordingly, issue notice.

11.1 Mr Shailendera Singh, learned senior standing counsel, accepts notice on behalf of the respondents/revenue.

12. Counter-affidavit will be filed within six weeks.

12.1 Rejoinder thereto, if any, will be filed at least five days before the next date of hearing.

13. List the matter on 17.10.2023.

14. In the meanwhile, the petitioner will file its reply to the impugned notice dated 23.02.2023. The petitioner is granted further four weeks to file reply to the said notice.

15. It is made clear while the concerned officer can proceed further in the matter; however, no precipitate steps will be taken against the petitioner till further directions of the court.

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

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

MARCH 23, 2023
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Click here to check corrigendum, if any