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

+ W.P.(C) 6259/2022 & C.M.Nos.18884-18885/2022

NIDHI AGRAWAL

..... Petitioner

Through: Mr.Sandeep Kumar with Mr.Shiven
Khurana, Advocates.

versus

INCOME TAX OFFICER, WARD 69(1) DELHI & ORS.

..... Respondents

Through: Mr.Ruchir Bhatia, standing counsel
for Revenue.

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Date of Decision: 20th April, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

MANMOHAN, J (Oral):

1. Present writ petition has been filed challenging the reassessment notice dated 31st March, 2021 issued under Section 148 of the Income Tax Act, 1961 [‘the Act’] for the assessment year 2016-17 as well as the assessment order dated 31st March, 2022.

2. Learned counsel for the petitioner states that even though the impugned notice was dated 31st March, 2021 and was issued vide email on 31st March, 2021 at 11:36 PM, yet it will be considered to have been issued/served to the petitioner on 01st April, 2021 and would thus be covered by the decision of this court in *Mon Mohan Kohli vs. Assistant Commissioner of Income Tax & Anr., W.P.(C) No.6176/2021*.

3. He further states that the notice dated 28th November, 2021 issued under section 143(2) read with Section 147 of the Act, by which the respondents sought clarifications on issues mentioned in the annexure thereto was accompanied by a blank annexure making it impossible for the petitioner to respond to the same.

4. Learned counsel for the petitioner also states that the detailed objections raised by the petitioner vide reply dated 14th March, 2022 were not considered by the respondents while passing the impugned assessment order dated 31st March, 2022.

5. He lastly states that the show cause notice-cum-draft assessment order dated 30th March, 2022 was issued in violation of principle of natural justice as it was made available on the Income Tax Portal at 12:42 PM and required the petitioner to respond to the same by 23:59 PM on the same day. He emphasises that the show cause notice-cum-draft assessment order was only placed on the portal but was not intimated to the petitioner.

6. Issue notice. Mr.Ruchir Bhatia, learned standing counsel accepts notice on behalf of the respondents. He states that though several opportunities were given to the petitioner, yet the reply was filed by the petitioner only at the fag-end.

7. Having heard learned counsel for the parties, this Court is of the view that the impugned show cause notice-cum-draft assessment order has been issued within limitation as the same was admittedly dispatched on 31st March, 2022 at 11.36 PM. Consequently, the petitioner is not entitled to benefit of judgement of this Court in *Mon Mohan Kohli* (supra).

8. However, this Court is of the view that there has been a violation of principle of natural justice as detailed objections filed by the petitioner vide

reply dated 14th March, 2022 were not decided prior to issuance of show cause notice-cum-draft assessment order dated 30th March, 2022.

9. This Court is also of the view that the petitioner was not given adequate opportunity to file response to the said show cause notice-cum-draft assessment order. Consequently, as there has been a violation of principle of natural justice, the impugned assessment order and demand notice dated 31st March, 2022 are set aside and the matter is remanded back to respondent no.2/NFAC, who is directed to decide the objections filed by the petitioner dated 14th March, 2022 in accordance with law, at the first instance. In the event, respondent no.2/NFAC does not find any merit in the objections filed by the petitioner, then it shall proceed further in the matter in accordance with law and pass appropriate orders.

10. With the aforesaid directions, present writ petition along with pending applications stand disposed of. This Court clarifies that it has not commented on the merit of the controversy. The rights and contentions of all the parties are left open.

MANMOHAN, J

DINESH KUMAR SHARMA, J

APRIL 20, 2022

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