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

+ WP (C) No.12195/2009

GOVT. OF INDIA (DEPTT. OF REVENUE),
DIRECTOR GENERAL OF INCOME TAX (ADMN.)
& ANR.

..... Petitioners

Through: Mr. Sanjeev Sabharwal, Standing Counsel
with Mr. Puneet Gupta, Junior Standing
Counsel & Ms. Gayatri Verma, Adv.

versus

M/S. DEVE PAINTS LTD. & ORS.

..... Respondents

Through: Ms. Maneesh Dhir, Ms. Jayashree Shukla &
Ms. Mithu Jain, Advs. for R-1.

CORAM:

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

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03.09.2012

The present writ petition has been filed by the Revenue under Article 226/227 of the Constitution of India seeking to impugn the order dated 19.3.2009 of the AAIFR which has dismissed the appeal filed by the Director General of Income Tax (Administration) challenging the sanction of rehabilitation scheme of the BIFR qua the respondent company, Deve Paints Limited, by an order dated 14.2.2008. The basic grievance made by the Revenue is that while in para 8.4.1 of the scheme the direction of the BIFR is to consider the various exemptions as under different provisions of

WP (C) No.12195/2009

Page 1 of 5

the Income Tax Act, 1961 (hereinafter referred to as the 'IT Act'), qua clauses 8.4.2 to 8.4.6, a specific direction has been issued to grant reliefs and concessions without the consent of the petitioner. Thus, an alternative prayer has been made, i.e., either to delete the concessions made available or in the alternative to prefix those clauses with "to consider" so that it is not a mandate to the Revenue but the Revenue would consider those concessions within established parameters.

In the process of advancing submission qua the aforesaid aspect learned counsel for the petitioners/Revenue had contended that the notice from the BIFR was not addressed to the designated authority which is the Director General of Income Tax (Administration) and there cannot be, thus, a proper service in view of the judgment of this Court in Government of India (Deptt. of Revenue) & Anr. Vs. AAIFR & Ors. (183) 2011 DLT 345. It has been held that the draft rehabilitation scheme ought to be circulated to only the concerned authority for its consent under direct tax law concession, which is the Director General of Income Tax (Administration). It is in this view thereof that it was pleaded that either the matter should be remanded back to BIFR for re-consideration or the prefix "to consider" should be affixed to the other clauses 8.4.2 to 8.4.6.

On the other hand learned counsel for respondent No.1-Company had pleaded that there was an admission on the part of the petitioner in the appeal filed before the BIFR at page 175 para 8 of the paper book that the orders of the BIFR were received by the Director General of Income (Administration) which is the concerned authority through the channels of

28

the Department of Revenue. Not only that, those papers were placed before the concerned authorities who applied their mind to it. In this behalf from the records at page 135 it was pointed out that a query had been posed to the Additional Director of Income Tax (Administration) to verify from the Standing Counsel as to what transpired qua the DRS/objections on the hearing held on 16.10.2007. There was also a subsequent noting by the same Officer that the matter may be filed and no action was required. Thus, the plea of respondent No.1 is based on the peculiar circumstances of the case where a conscious decision has been taken qua the DRS scheme and, thus, it was pleaded that the petitioner/Revenue cannot be permitted to now reagitate the issue under the guise of absence of proper service of the DRS scheme when funds had been infused on the basis of approved scheme, with all workers and secured creditors having been paid off.

In view of the aforesaid controversy recorded in our order dated 9.8.2012 we had called upon learned counsel for the petitioner/Revenue to verify as to who had made the notings to determine whether any conscious decision was taken in this behalf.

Learned counsel for the petitioner has subsequently clarified that the notings were of one Mr. George, Additional Director, Income Tax (Recovery) for the benefit of Ms. Meenakshi Gupta, Assistant Director, Income Tax (Recovery). He has also explained the hierarchy in the concerned Department, which is presided over by the Director General, Income Tax (Administration) being the Nodal Officer and who has under him the Director, Income Tax (Recovery), the Additional Director, Income Tax (Recovery) and the Assistant Director, Income Tax (Recovery).

Learned counsel also produced further endorsements of the said Mr. George opining to Ms. Gupta that an appeal should be preferred before the AAIFR, such notings having been made on 19.2.2008 and it is in view thereof that the appeal was filed before the AAIFR on 2.4.2008.

Learned counsel for respondent No.1-Company points out that the actions on the part of the Department have been highly belated and the Department cannot sleep over its right of appeal, if it so chooses to exercise it. The matter having been brought to the notice of the relevant Department, such appeal would cause grave prejudice to the persons who have infused funds and cleared the liabilities.

There is some merit in this contention as on the basis of the draft rehabilitation scheme which has been subsequently approved, strategic investors infused funds to clear the liabilities. If the Department chooses to remain silent over a period of time, it must bear the consequences thereof. The exception, of course, is where the concerned Department has not been served and that is the aspect examined in the judgment referred to aforesaid, the objective being that it is the concerned Department to whose notice the DRS should be brought and not to any other Officer in the Department. In the present case we have already explained the hierarchy as set forth by learned counsel for the petitioners/Revenue with the Nodal Officer at the helm of it. The papers were served on the Revenue Department and were subsequently forwarded to the concerned Department. They did not remain unattended but a conscious decision was taken. If long periods of time were spent on this, then the Department must take part of the blame.

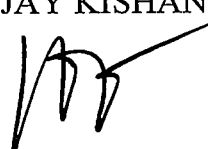


A fair suggestion has been made by learned counsel for respondent No.1 that despite the controversy aforesaid she is willing to concede that qua even other concessions referred to in paras 8.4.2 to 8.4.6, the Department may “consider” the same but that should not be a license to reopen the concessions already granted and assessments made by the assessing authorities as this would be extremely unfair and reopen closed chapters. This position is fairly acceded to even by learned counsel for the petitioners/Revenue in view of the peculiar facts set out hereinabove.

We, thus, consider it appropriate to dispose of the writ petition with the agreed direction qua the petitioners (other authorities not having challenged the same, the same would remain binding on them) that the concessions in the rehabilitation scheme as contained in paras 8.4.2 to 8.4.6 would have the prefix “to consider” qua the income tax department with, however, the condition that where such concessions have already been granted and assessments made which we have not been appealed against, the modification made by our order today would not be a license to reopen those concessions.

The petition accordingly stands disposed of leaving the parties to bear their own costs.


SANJAY KISHAN KAUL, J.


VIPIN SANGHI, J.

SEPTEMBER 03, 2012
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