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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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\+ **W.P.(C) 3328/2014**

GLOBAL INDIA ELECTRICALS ..... Petitioner

Through: Ms Rashmi Chopra, Mr Ruchesh Sinha and Ms Asiya, Advocates.

versus

COMMISSIONER OF INCOME TAX -XII & ANR .... Respondents

Through: Mr Dileep Shivpuri, Senior Standing counsel and Mr Sanjay Kumar, Junior Standing counsel.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE VIBHU BAKHRU

O R D E R
% **04.04.2016**

CM No.6862/2014

1. Allowed, subject to all just exceptions.

W.P.(C) 3328/2014 & CM No.6861/2014

2. The challenge in this petition is to an order 7th March, 2014 passed by the Commissioner of Income Tax, Delhi-XII (CIT-XII) under Section 264 of the Income Tax Act, 1961('Act').

3. The Petitioner (hereafter 'Assessee') is a partnership firm having three partners and is engaged in the business of manufacture and supply of electrical equipments. It has its office at Seelampur, Delhi. The Assessee filed a return of income for the Assessment Year ('AY') 2009-10 declaring a

total income of Rs. 1,83,470/-. The return was picked up for scrutiny and by an assessment order dated 29th December 2011 issued under Section 143(3) of the Act, the following four major additions were made by the Assessing Officer ('AO') to the income of the Assessee:

(i) addition of Rs. 37,75,000/- pertaining to the partners' capital introduced by the partners;

(ii) addition of Rs. 14,45,000/- on account of the cash deposits made on 3rd September, 2008 and 22nd October, 2008 in the account;

(iii) addition of Rs.1,82,07,859/- on account of unconfirmed creditors and

(iv) addition made on ad-hoc basis of Rs.98,447/- being 25% of the expenses disallowed by the AO.

4. According to the Assessee, to avoid possible delays, it withdrew the appeal filed against the assessment order before the Commissioner of Income Tax (Appeals) and filed a revision petition before the Commissioner of Income Tax - XII (CIT-XII) under Section 264 of the Act. The Assessee states that without giving it an adequate opportunity, the CIT-XII passed the impugned order rejecting the revision petition and upholding the assessment order.

5. The main ground of challenge raised by the Assessee to the impugned order of the CIT-XII revolves around the procedure adopted in dealing with the revision petition and in failing to consider the specific points urged by the Assessee.

6. Under Section 264(1) of the Act, in examining a revision petition, the CIT may call for the record of the proceedings in which the assessment order was

passed and make such inquiry or cause such inquiry to be made and, subject to the provisions of this Act, pass an order not prejudicial to the Assessee.

7. Although, in the body of the impugned order there is no reference to an inquiry having been undertaken by the CIT-XII, in the counter affidavit filed to the present petition, it is stated by the Respondent in para 19 that a "remand report was duly called for from the AO, which was submitted by him vide letter dated 14th May, 2013 available on record." A copy of the said remand report has, however, not been enclosed with the counter affidavit. Ms. Rashmi Chopra, learned counsel for the Assessee, referred to para 12 of the rejoinder where with reference to para 19 of the counter affidavit, it is stated that "contents of the remand report, if any, were not brought to the notice of the Petitioner. No opportunity to file any rejoinder to the remand report of the Respondent No.2 was given to the Petitioner."

8. That the remand report was not made available to the Assessee has not been denied by the Respondents. However, it is contended by Mr Dileep Shivpuri, learned Senior standing counsel for the Revenue, that as long as the said remand report was not used against the Assessee, there was no legal requirement to provide a copy thereof to the Assessee.

9. If in fact a remand report was called by the CIT-XII from the AO, there is no reason for the CIT not to have mentioned that fact in the impugned order. The mere fact that said remand report was not used against the Assessee does not satisfy the requirement of the CIT having to make available to the Assessee all the materials available with the CIT while deciding the revision petition. In a given case, there may be possibility that the remand report has

something in favour of the Assessee and which the Assessee could rely on in support of its case. If the remand report contains something adverse, then the Assessee might be able to clarify it. In either event, having called for a remand report, it was incumbent for the CIT to have made available a copy thereof to the Assessee.

10. However, the more serious problem is with the manner in which the CIT has proceeded to deal with the contentions raised by the Assessee in relation to the additions made by the AO to the income of the Assessee. Illustratively, two of the additions made by the AO may be referred to.

11. In relation to the addition made of a sum of Rs.14,45,000, the assessment order refers to the fact that a notice under Section 133 (6) of the Act was issued to one of the debtors of the Assessee, viz., M/s Enkay Electricals. The assessment order states that "in response to the letter under Section 133(6) of the Income Tax Act, Shri Devi Prasad, CA of M/s Enkay Electricals informed on 29th December, 2011on mobile that M/s Enkay Electricals, has not made any cash transaction with M/s Global India Electricals, during the financial year 2008-09."

12. The case of the Assessee, on the other hand, is that it produced before the AO a confirmation issued by M/s Enkay Electricals by a letter dated 19th December 201. The said letter has not been referred to by the AO. Further, the details of the conversation on the mobile phone that the AO had with the CA of M/s Enkay Electricals were not provided to the Assessee.

13. In dealing with the above objection of the Assessee, the CIT in the

impugned order proceeds on a factually erroneous basis that there was no response to the notice issued to M/s Enkay Electricals under Section 133(6) of the Act. Although in the impugned order the CIT-XII notes that a confirmation letter of M/s Enkay Electricals was produced, it is not discussed. The appropriate course for the CIT-XII to adopt would have been to provide an opportunity to the Assessee to produce the said party before the CIT-XII to clarify whether the confirmation letter was in fact issued by such party.

14. As regard the other addition of a sum of Rs. 1,82,07,859/- on account of unconfirmed creditors, a reference was made in the impugned order of the CIT-XII to notices issued under Section 133(6) of the Act to the named creditors. The CIT-XII also noted that notices issued to four of the creditors were returned unserved. However, the dates on which the said notices were issued and the dates on which they were returned unserved are not clear. This attains significance since confirmation letters appear to have been issued in November 2011 by those very parties (copies of which have been enclosed with the rejoinder affidavit). Here, again the Court finds that the procedure adopted by the CIT-XII in dealing with the objections of the Assessee is not satisfactory. The CIT-XII appears to have simply repeated the findings of the AO.

15. The Court refrains from commenting on the contentions of either the Assessee or of the Revenue on the merits of the additions made by the AO. The Court is in the present proceedings essentially concerned with the procedure adopted by the CXIT-XII in examining the revision petition of the

Assessee which, according to the Court, was not satisfactory.

16. For the aforementioned reasons, the Court set asides the impugned order dated 7th March, 2014 passed by the CIT-XII and restores the Petitioner Assessee's revision petition to the file of the CIT-XII for a fresh hearing uninfluenced by the previous decision of the CIT-XII or by any of the observations in the present order. The CIT-XII will provide the Assessee with a copy of the AO's remand report and also permit the Assessee to produce the parties who have issued confirmation letters in its favour. The CIT will endeavour to dispose of the revision petition within a period of six months from the date of receiving a certified copy of this order.

17. The petition is disposed of in the above terms.

S.MURALIDHAR, J

VIBHU BAKHRU, J

APRIL 04, 2016
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