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

\+ **W.P.(C) 4423/2014**

HB LEASING FINANCE CO. LTD. ..... Petitioner

Through: Mr. Satyen Sethi and Mr. Arta Trana Panda, Advocates.

Versus

DEPUTY COMMISSIONER OF INCOME TAX,CIRCLE 12(1) ..... Respondent

Through: Mr. Rahul Chaudhary, Senior Standing Counsel.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

O R D E R

% 08.12.2016

1. The controversy in this petition is regarding the outcome of the petitioner's settlement application under Section 245C (1) of the Income Tax Act, 1961 (hereinafter to be referred as 'the Act'.) The grievance urged is that the settlement proceedings stood concluded on 10.03.2014 when the Chairman of the Commission pronounced an order stating that the case would revert to the Assessing Officer (AO) due to the non-cooperation of the petitioner. The petitioner has urged further that the Member (JS) was of a contrary opinion, stating that no provision permitted the course of action. A letter dated 03.07.2014 has been relied upon and also impugned by the petitioner. Its further states that after taking into consideration the entire facts, the Bench had taken a view that the proceedings before the Commission were not concluded on 10.03.2014. The petitioner urged that

even if Members differ from each other on certain issues, then the reference of the same be made under Section 245 BD of the Act and the differences were to be reduced in writing, and that the record would reveal whether its contention that the matter was relegated to the AO is correct or not.

2. The impugned letter of 03.07.2014 notes the position of the parties and further states that after the proceedings of 10.03.2014, the Chairman as well as the Member (JS) had retired. It was under these circumstances that the notice called upon the petitioner to be represented in further proceedings.

3. The respondents' position in the proceedings before this Court is that there appears no difference, as stated by the petitioner was, in fact, recorded. Its stated position is also that once a settlement application is made, the applicant is not permitted to withdraw it. In the circumstances, it seeks dismissal of the petition.

4. During the course of hearing, it was put to the counsel for the parties that if the position taken in the proceedings by the petitioner itself is that the proceedings were relegated to the AO for assessment in accordance with law, all powers available under the Income Tax Act, can be resorted to in the event of findings either wholly adverse or partially adverse to the petitioner and in the circumstances, the position of the applicant/petitioner that the matter was, in fact, relegated to the AO, could be given effect to. Learned counsel for the respondent submitted that whilst this may be the position in law, there is nothing on record to support such a conclusion since, in fact, there is no difference of opinion, as contemplated under Section 245 BB of the Act.

5. Having regard to the fact that the settlement application concededly did not result in any order either accepting the application or rejecting it and

further that in the event of rejection, the normal assessments would have proceeded with, all powers reserved to the AO and the authorites, the Court is of the opinion that no useful purpose would be served in directing the conclusion of settlement proceedings since the petitioner itself stated that the settlement proceedings culminated in the direction to the AO to complete the assessment in accordance with law. Accordingly, the matter shall be taken up for further proceedings/fresh assessment by the AO uninfluenced by the intervening interregnum and the pendency of the settlement proceedings. The petitioner shall be present through its representative before the AO on 19.12.2016.

6. The writ petition is disposed off in the above directions.

7. A copy of this order be given *dasti* to the learned counsel for the parties under the signature of the Court Master.

S. RAVINDRA BHAT, J.

NAJMI WAZIRI, J.

DECEMBER 08, 2016

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