$~21

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

\+ W.P.(C) 3628/2016 & CM No.15535/2016 (stay)

CASHEDGE INDIA PRIVATE LIMITED ..... Petitioner

Through Mr Sachit Jolly with Mr Rahul Sateeja and Mr Gautam Swarup, Advocates.

versus

THE DEPUTY COMMISSIONER OF INCOME-TAX & ANR. ..... Respondents

Through Mr P. Roychaudhuri, Advocates.

CORAM:
HON'BLE MR. JUSTICE BADAR DURREZ AHMED
HON'BLE MR. JUSTICE SANJEEV SACHDEVA

O R D E R

% 24.05.2016

This writ petition pertains to the order passed by the TPO dated 29.03.2016 in respect of the Assessment Year 2008-09. The TPO had utilized purported segmental data of several companies for the purposes of arriving at the arms' length price, as indicated in the impugned order. The grievance is that despite the petitioner seeking an opportunity to cross-examine the authorized personnel of the said companies, whose data had been relied upon, the opportunity had not been granted to the petitioner. That being the case, the statement of the learned counsel for the petitioner is that the segmental data of those companies could not have been relied upon by the TPO inasmuch as that would be contrary to the principles of natural justice.

We had granted time to the respondents to take instructions as to whether an opportunity of cross-examination was granted to the petitioner or not. The learned counsel for the respondents submits that all the documents were made available to the petitioner and, according to him, that was sufficient opportunity. He, however, candidly admits that no opportunity of cross-examination of the authorized personnel, who had provided the segmental data, was granted to the petitioner.

When reliance is placed on the data provided by different parties, the petitioner would have had no opportunity of rebutting the data unless the persons, who submitted the data, were subjected to cross-examination. This is all the more so because the data that was submitted was not part of the audited accounts.

In these circumstances, we set aside the impugned order dated 29.03.2016 and remit the matter to the TPO for affording an opportunity to the petitioner to cross-examine the authorized personnel of the said companies, who submitted the segmental data, which has been utilized by the TPO. The TPO may thereafter pass a fresh order in accordance with law.

The learned counsel for the petitioner states that the petitioner shall not take up the plea of limitation.

The writ petition is disposed of in the above terms.

Dasti.

BADAR DURREZ AHMED, J

SANJEEV SACHDEVA, J

MAY 24, 2016
st