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

\+ W.P. (C) 1543/2017, CM APPL.6915-6916/2017

CENTURY METAL RECYCLING PRIVATE LIMITED... Petitioner
Through: Mr. Ashok Kumar Singh, Sr. Advocate with Ms. Mona Tomar and Ms. Saloni Singh, Advocates.

versus

ASSISTANT COMMISSIONER OF INCOME TAX,
NEW DELHI & ORS. ..... Respondents
Through: Mr. Sanjay Kumar, Jr. Standing Counsel.

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

O R D E R

% **21.02.2017**

Issue notice. Mr. Sanjay Kumar, Advocate accepts notice on behalf of the Revenue.

The petitioner is aggrieved by the order dated 20.12.2016 made under Section 147/143 (3) of the Income Tax Act, 1961 ("the Act"). Its grievance is that it was not given proper opportunity of hearing and was also prevented from producing all the relevant records in the earlier assessment proceedings. Validity of the reassessment proceedings is challenged.

The writ petitioner was issued with reassessment notice on

31.03.2016 in respect of the AY 2009-10. Apparently, the basis for the reassessment notice was an investigation conducted by the Central Excise authorities. The writ petitioner in its objections to the reassessment notice brought to the notice of the Revenue that investigation and further proceedings led to the matter being dropped by the Central Excise authorities. Upon finding no response, the petitioner approached this Court by filing W.P.(C)8857/2016 for a direction to quash the reassessment notice. This was permitted to be withdrawn on 28.09.2016 when the Court recorded as follows: -

> *"After some hearing, Mr. Rajesh Mahna, counsel for the petitioner has sought liberty to withdraw the writ petition and urge contentions with respect to the reopening of the assessment before the revenue authority. Liberty granted.*
>
> *The writ petition along with the pending applications is dismissed as withdrawn."*

The Revenue had, in the meanwhile, before the petitioner approached this Court, rejected the objections to the reassessment on 08.08.2016. That in fact formed the basis of the writ proceedings. Thereafter apparently notices were issued under Section 142 (of the Act) when the Revenue asked the petitioner to produce several documents - these were furnished on 15.11.2016. Further notice was issued on 22.11.2016 to which the petitioner issued an interim reply on 01.12.2016. On that date, i.e., 20.12.2016, hearing took place. The records also showed that further hearings took place.

Learned counsel for the petitioner urges that the reassessment notice and the record of proceedings before the Assessing Officer would clearly reveal that no effective opportunity was given to the petitioner; besides, the reassessment was premised on an entirely erroneous foundation inasmuch as with the closure of the Central Excise proceedings, the rationale for reassessment seized to exist. It is contended that the AO's order - framing the assessment under Section 143 (3) on 20.12.2016 by completely ignoring these events and also not furnishing adequate opportunity to the petitioner, vitiates the assessment. The petitioner's counsel urged that denial of the opportunity to cross examine has also resulted in vitiating the proceedings and that the assessment order is, therefore, void. Learned counsel relied upon *Oracle India Pvt. Ltd. v. Deputy Commissioner of Income Tax*, 2014 SCCONLINE Del 1753, *Bombay Stock Exchange Ltd. v. Deputy Director of Income Tax*, (2014) 365 ITR 181 (Bom) and *Sun Pharmaceutical Industries Ltd. v. Commissioner of Income Tax*, (2016) 227 DLT 623.

It is evident from the above discussion that the petitioner is approaching this Court in a second inning as it were, vis-a-vis the validity of the reassessment notice. Its previous attempt to seek an order quashing the reassessment notice failed as this Court was satisfied that the reasons furnished as well as the consequential order dated 08.08.2016, could stand the scrutiny of law. In the circumstances, its reiteration and regurgitation as it were on the grounds assailing the reassessment notice are precluded. The reliance on the decisions in the opinion of the Court is not appropriate because none of them disclose that the petitioner had approached the Court on an earlier occasion and were permitted to reiterate the same grounds at the completion of the assessment.

As far as the validity of the assessment goes, the Court notices that a number of hearings took place before the AO, who called for the documents not at one go, but at least at two separate occasions. The proceedings completed on 15.11.2016 and in the circumstances, the petitioner's complaint that it was deprived of an opportunity to cross examine is hardly a matter for this Court to exercise its writ jurisdiction. It is not in every case where violation of natural justice is complained of that the Court exercises its special jurisdiction to intervene in the proceedings; nothing was shown that the existing appellate remedy of an appeal to the Commissioner would in any manner be inadequate to address the situation. Similar complaints are made before the Commissioner in several cases, in a routine manner - i.e., of denial of natural justice, denial of opportunity of cross-examination etc.

In these circumstances, the Court is of the opinion that there is no special feature warranting exercise of discretion; the writ petition is, therefore, dismissed.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

FEBRUARY 21, 2017
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