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

\+ W.P.(C) 11674/2018, CM APPL. 45061-45062/2018

SVP BUILDERS (INDIA) LIMITED ..... Petitioner

Through: Mr. Prakash Kumar, Mr. Rupinder Kr. Aggarwal, Advs.

versus

ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE-22(2), DELHI ..... Respondent

Through: Mr. Zoheb Hossain, Sr. Standing Counsel with Mr. Deepak Anand, Jr. Standing Counsel for Revenue.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE PRATEEK JALAN

<u>O R D E R</u>

% **29.10.2018**

The petitioner objects to the notice issued under Section 143(2) of the Income Tax Act ("the Act" hereafter). The return of income was filed on 30.12.2016 under Section 139(4) of the Act. The record discloses that the respondent authorities – on two occasions alleged that the returns were defective; the second intimation was on 10.07.2017. In the meanwhile, on 12.07.2017, the petitioner filed its return without defects under Section 139(9). Yet another communication was addressed on 14.07.2017. In the light of these circumstances, the petitioner had earlier approached the Court by filing W.P.(C) 6314/2017. It relies upon the orders made in those proceedings as well as certain internal communications, which according to it concede that the original returns filed by it (on 30.12.2016) were in order.

The final order of this Court in earlier writ petition is as follows:

> *"Learned counsel for the petitioner has placed before us a copy of the e-mail message dated 13.2.2018 received by him from the JDIT CPC, Bangalore, stating that the Return, which was declared to be defective, has been processed.*
> *The respondents would be bound by their e-mail message dated 13.2.2018 that the Return has been processed and intimation under Section 143(1) of the Income Tax Act, 1961 has been issued.*
> *We clarify that we have not expressed any opinion on merits or commented on the allegations made in the counter-affidavit. Equally, in case the Rehun for Assessment Year 20 16-201 7 is taken up for scrutiny assessment, merits would be examined, without being influenced by any observations made in the counter-affidavit.*
> *Recording the above, the writ petition is disposed of as infructuous."*

At this stage to address the dispute, the Court would necessarily have to delve into the assessment record to discern whether as a matter of fact the original return was defective and, if so, to what extent and whether the Revenue's claim that the defects were rectified later, are correct. This fact dependent exercise would be best left for decision of the concerned statutory authorities. The Court also was informed during the hearing that the petitioner had urged these contentions before the Assessment Officer; its apprehensions are that he has proceeded on the merits of the assessment without addressing the threshold objections.

Having regard to the observations in the final order in the earlier writ petition and the above observations, this Court is of the opinion that intervention at this stage is not called for. However, it is hereby directed that the concerned AO will deal with the petitioner's objections as to the bar of limitation under Section 143(2) of the Act, on its merits, besides examining the return on the merits and completing the scrutiny assessment. The AO shall record specific reasons for his conclusions with respect to the objections as to limitation, in the final order to be made in this regard.

The rights and contentions of the parties are reserved.

The writ petition is disposed of in the above terms.

S. RAVINDRA BHAT, J

PRATEEK JALAN, J

OCTOBER 29, 2018/akv