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

\+ W.P.(C) 10685/2019 and C.M. No. 44113/2019

ADITI INFRABUILD & SERVICES LTD. ..... Petitioner

Through: Ms. Rashmi Chopra, Mr. Ruchesh Sinha, Mr. Ashish Parashar and Ms.Aasiya Khan, Advocates.

versus

ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE 1(2) & ANR. ..... Respondents

Through: Mr. Zoheb Hossain, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE SANJEEV NARULA

O R D E R

% **07.11.2019**

1. The petitioner has preferred the present writ petition to assail the order dated 09.09.2019 passed by the Assessing Officer. By the impugned order, the Assessing Officer has dealt with the petitioner's communication dated 27.08.2019.

2. The petitioner – by the said communication dated 27.08.2019, had sought from the Assessing Officer the letter/ information received from the Investigation Wing/ concerned parties at Kolkata, in relation to the petitioner's transaction with six parties involving an amount of Rs.35.90 Crores. The petitioner made a request that the said letter/ information be provided after redacting third party confidential information. The impugned

order passed by the Assessing Officer, inter alia, observes:

> *" The Hon'ble High Court of Delhi has clarified that 'all the points urged by the Petitioner in the present writ petition are left open to be urged before the Assessing Officer (AO's) in the reassessment proceedings'. As requested by the assessee, "if the information is really 'complex in nature' as contended, it is all the more necessary that it is confronted to the assessee to enable it to unveil the said complexity and remove the doubts, if any, to your satisfaction", it is once again reiterated that the undersigned shall examine the information received and carry out scrutiny proceedings as per law giving due opportunity to the assessee. Your requests and apprehensions are duly noted and have been considered. The directions as and when required shall be sought from higher authorities as per law. The assessee is free to approach higher authorities to seek directions under relevant provisions of the Act.*
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> *The undersigned has duly considered the order of Hon'ble High Court of Delhi and will act in accordance to its directions. The undersigned has considered the order and respect the order of Hon'ble High Court. The information being sought shall be confronted to the assessee during the assessment proceedings, giving due opportunity to assessee to present its case. The assessee shall also be afforeded due opportunity before the scrutiny proceedings are taken to a logical point. It is once again informed that the reasons recorded have been duly communicated to you in the past as required by the guidelines laid down by the Hon'ble Apex Court in the case of GKN Driveshafts (India) Ltd. v/s D.C.I.T. (2003) 259 1TR 19 (SC).*
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> *It is reiterated that concerned documents, requested by your good self shall be confronted to you and ample opportunity shall be provided to you to present your case. It may also be brought to your kind attention that reassessment in your case gets barred by time on 31.12.2019. In light of this, you would appreciate that the proceedings cannot be kept in abeyance as only about three and half months are left till time barring date, and your cooperation is most required now*

more than ever to take the scrutiny proceedings to its logical end."

3. The petitioner had earlier preferred W.P. (C.) No. 8246/2019 to assail the re-opening of the assessment proceedings under Section 147/ 148 of the Act vide notice dated 27.03.2019. That writ petition was rejected by this Court since the Court was not persuaded at that stage to interfere in the re-opening of the assessment proceedings. The Court clarified that all points urged by the petitioner in the writ petition were left open to be urged before the Assessing Officer in the re-assessment proceedings. Any request made by the petitioner for inspection of the file, or copies of documents was required to be considered by the Assessing Officer in accordance with law. The Court did not express any opinion on the merits of the contentions of the parties.

4. Consequently, the re-assessment proceedings were started. Notices have been issued to the petitioner under Section 142(1) on 09.09.2019 and 17.09.2019 calling upon the petitioner to furnish information. The petitioner has filed the present petition while the re-assessment proceedings are still in progress.

5. The submission of Ms. Chopra, learned counsel for the petitioner is that despite stating in the impugned order that the petitioner would be confronted with all the concerned documents and that ample opportunity would be provided to the petitioner assessee to present its case, the petitioner has not been provided with documents relied upon by the respondent, on the basis of which the re-assessment has been ordered. The submission is that the petitioner is, therefore, entitled to raise a grievance, at this stage, before this Court by moving the present writ petition.

6. On the other hand, Mr. Hossain has pointed out that, firstly, the petitioner expressed its view that it would not participate in the re-assessment proceedings. In this regard, Mr. Hossain has drawn our attention to the petitioner's communication dated 16.09.2019, wherein the petitioner, inter alia, stated:

> *"3. The Ld. A.O. is not appreciating that the assessee in this case is challenging the jurisdiction to carry on the reassessment proceeding and hence the view of the Ld. A.O. that the relevant information shall be supplied during the course of assessment proceedings is not sustainable in law and is incongruous. In simple words, as per the direction of the Hon'ble High Court, the assessee is required to file a fresh objection before the A.O. The information/letter received from Kolkata Investigation Wing forms the basis of reopening, unless and until the same is provided to the assessee, the assessee shall not be in a position to make an effective presentation against reopening of the case which is already conducted U/s 143(3) of the Income Tax Act after detailed scrutiny. The assessment proceedings cannot go on unless the objections are being disposed off by the A.O. It may also not be out of place to mention here that the view mentioned in AO's letter of not providing the relevant information as intimated now, was not objected to at the time of hearing of the writ petition before the Hon'ble High Court, and hence the High Court provided the liberty to the assessee to raise all contentions before the Assessing Officer."*

7. He submits that only after an order was passed by this Court on 17.10.2019, the petitioner has been participating in the re-assessment proceedings. Mr. Hossain submits that the Assessing Officer, apart from functioning as a quasi-judicial authority, is also empowered to and undertakes an investigation exercise, for which purpose the notices under Section 142(1) have been issued. In this regard, he has referred to the following decisions:

(i) ***Union of India & Others Vs. Vipan Kumar Jain & Others***, (2005) 9 SCC 579;

(ii) ***The Commissioner of Income Tax V Vs. Nagesh Knitwears P. Ltd.***, (2012) 345 ITR 135; and

(iii) ***Commissioner of Income-tax, Central-I, Kolkata Vs. Maithan International***, (2015) 56 taxmann.com 283 (Calcutta).

8. Mr. Hossain further submits that it is not the function of the Court to monitor investigation process, so long as such investigation does not transgress any provision of law. It must be left to the investigation agency to decide the venue, the timings, all the questions and the manner of putting such questions to the persons involved. In this regard, he placed reliance on ***Dukhishyam Benupani, Asstt. Director, Enforcement Directorate (FERA) Vs. Arun Kumar Bajoria,*** (1998) 1 SCC 52, which was a case relating to investigation by the Enforcement Directorate. He submits that the same principles would apply in respect of investigation undertaken by the Assessing Officer under the Income Tax Act.

9. He has also placed reliance on the decision of this Court in ***Acorus Unitech Wireless Private Limited Vs. Assistant Commissioner of Income Tax***, (2014) 362 ITR 417, wherein this Court rejected the claim made by the assessee for supply of the 2-G Spectrum Report, and held that the non-supply of such investigation report does not vitiate the notices under Section 147 & 148 of the Income Tax Act. This decision was followed by the Gujarat High Court in ***Yogendrakumar Gupta Vs. Income Tax Officer***, (2014) 366 ITR 186. The Gujarat High Court, inter alia, observed:

> *"21. ... ... Insistence on the part of the petitioner to provide any further material forming the part of investigation carried out against Dalmias also needs to meet with negation, as the law requires supply of information on which Assessing Officer recorded her satisfaction, without necessitating supply of any specific documents. The proceedings initiated under section 147 of the Act would not be rendered void on non-supply of such document for which confidentiality is claimed at this stage, following the decision of the Delhi High Court in case of Acorus Unitech Wireless (P.) Ltd. (supra). Assumption of jurisdiction on the part of the Assessing Officer is since based on fresh information, specific and reliable and otherwise sustainable under the law, challenge to reassessment proceedings warrant no interference."*

10. Mr. Hossain submits that even under the Right to Information Act, under Section 8(h) with Entry 16 of the Second Schedule, the Directorate General of Income Tax (Investigation) is exempted from application of the Act.

11. Having heard learned counsels, we are of the view that there is no merit in the present petition. So far as the petitioner's challenge to the re-opening of the proceedings is concerned, this Court has already rejected the same by observing that it shall be open to the petitioner to raise all its pleas before the Assessing Officer. The Assessing Officer is now carrying on further investigation, for which purpose notices under Section 142(1) have been issued to the petitioner. It is for the petitioner to comply with the said investigation. The Assessing Officer has already given an assurance to the petitioner that the petitioner would be confronted with whatever material is sought to be relied upon during the course of re-assessment, and that the petitioner would be granted ample opportunity in the matter. We have no

reason to assume, at this stage, that the Assessing Officer would not undertake the re-assessment proceedings in accordance with law. In any event, if there is any infraction of law by the Assessing Officer in the matter of carrying out the re-assessment proceedings, and the petitioner is aggrieved by the re-assessment order that the Assessing Officer may pass, it shall be open to the petitioner to raise all its pleas in appeal, firstly, before the CIT (Appeals), and thereafter, before the ITAT, if necessary.

12. In our view, an assessee cannot approach the High Court under Article 226 of the Constitution of India when the assessment/ re-assessment proceedings are in progress with a plea that the assessee is not being supplied with information/ documents by the Assessing Officer that he has asked for. If such petitions are routinely entertained, not only would it lead to opening of flood-gates, but also it would be extremely difficult for the Assessing Officer to complete the assessment proceedings within the period of limitation prescribed under the Act.

13. We, therefore, do not find any merit in this petition and dismiss the same leaving it to the petitioner to raise its grievance before the Appellate Forum in case the petitioner feels that there has been infraction of the procedure, or the principles of natural justice in the matter of framing of the re-assessment order.

VIPIN SANGHI, J

SANJEEV NARULA, J

NOVEMBER 07, 2019
B.S.Rohella