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

\+ W.P.(C) 471/2019 & CM Nos.2105-06/2019

TIPSY FINANCIAL AND MANAGEMENT SERVICES PVT. LTD. ..... Petitioner

Through : Mr. Sanat Kapoor, Adv.

versus

INCOME TAX OFFICER , WARD 25(3) & ORS..Respondents

Through : Mr. Sanjay Kumar and Mr. Asheesh Jain, Advs.

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

O R D E R

% **18.01.2019**

Issue notice to the respondents.

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

The petitioner's grievance is that the impugned re-assessment notice cannot be sustained because the order disposing of its objections (to the notice for re-assessment under Section 147/148) was never served upon it. It further complains that the final re-assessment order does not deal with the objection as to the legality of invocation of notice under Section 147. A substantive ground challenging the legality of the re-assessment notice is that the concerned Assessing Officer (A.O.) of Ward No.13, who had originally framed the assessment under Section 143(3) did not issue it but rather someone else i.e. ITO Ward No.25(3). It was also urged that the re-assessment order has proceeded to impose huge tax demand to the extent of ₹1.5

crores.

This Court is of the opinion that that the question of legality or otherwise with respect to the re-assessment notice, issued allegedly by an officer not competent to do so, is a ground that can be urged before the Commissioner of Income Tax (Appeal). At the same time, this Court is also of the opinion that given the petitioner's complaint that it was not served with the order disposing of its objections, some element of prejudice has been caused to it, though not sufficient to warrant the quashing of the order altogether.

In these circumstances, it is open to the petitioner to approach the CIT (A) and urge all grounds including the question of legality of the order made by allegedly an incompetent officer. The demands to the extent they are in excess of 10% of the amounts sought to be raised pursuant to the re-assessment notice, are hereby stayed till the disposal of the appeal by the CIT(A). In other words, the petitioner shall pay only 10% of the demanded amount. This arrangement shall enure and bind the parties till the disposal of the appeal by then CIT (A), who shall consider all grounds urged by the petitioner and record specific findings in that regard.

The writ petition is disposed of in the above terms.

S. RAVINDRA BHAT, J

PRATEEK JALAN, J

JANUARY 18, 2019/aj