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

\+ W.P.(C) 1534/2019

M/S AGSON AGENCIES INDIA PRIVATE LIMITED ..... Petitioner
Through: Dr. Rakesh Gupta, Mr.Rohit Kumar Gupta & Ms. Monika Ghai, Advs.

versus

ASST.COMMISSIONER OF INCOME TAX, & ANR. ..... Respondents
Through: Mr. Deepak Anand, Jr. Std. for Mr.Zoheb Hossain, Sr. Std. Counsel.

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

O R D E R
% **15.02.2019**

CM Appl. 7105/2019*(exemption)*

Exemption allowed, subject to all just exceptions.

The application is disposed of.

W.P.(C) 1534/2019 & CM Appl. 7104/2019

1. Issue notice. Mr. Deepak Anand, Junior Standing Counsel accepts notice.

2. The petitioner's grievance is that the impugned amount of ₹4.92 crores has been demanded from it pursuant to the assessment completed on 14.12.2018. The petitioner is a trader in metals and undertakes substantial import. For A.Y. 2016-17, the Assessing Officer (AO) issued notice under Section 143(2) and thereafter carried out inquiries. It is contended that till 05.12.2018 the AO had not made any queries with respect to two claims of expenditure that were finally added back. It is submitted that on 05.12.2018

a questionnaire was issued following a show cause notice. The last date given was 08.12.2018. Since the petitioner could not for some reasons furnish the particulars within the time the assessment was completed and an additional demand of ₹ 4.90 crores was made. It was submitted that the request for stay of the demand has not been granted by the Revenue Authorities.

3. In support of the proceedings Dr.Rakesh Gupta, learned counsel for the petitioner urges that consistently in the past years 2013-14, 2014-15, 2015-16 scrutiny assessments were completed and identical expenditure was allowed. In these circumstances, the present demand of ₹98 lakhs pursuant to the AO's order is excessive and arbitrary. Learned counsel for the respondent urges that the AO's order clearly reflects that the petitioner was unable to reply to the enquires and consequently the additions made and final assessment is justified. It was further submitted that the tax authorities in this case granted eventual relief to the petitioner, by directing deposit of only 20% of the demand and exempted the balance, in line with the circular dated 01.09.2016. It is further stated that the petitioner itself volunteered to deposit the said amount of ₹ 98 lakhs.

4. This Court has considered the submissions and the materials on record. *Prima facie,* the notice of 05.12.2018 by the AO required submission of elaborate details which the petitioner could not furnish within the time. This led to the additions, which ultimately impacted upon the demand. Given these circumstances, and also keeping in mind that in the past for three consequent previous assessment years, similar expenditure appears to have been claimed and allowed, this Court is of the opinion that some equitable relief is necessary.

5. In the circumstances, the petitioner is directed to pay ₹ 40 lakhs, within three weeks [which shall be in addition to ₹ 20 lakhs deposited by it pursuant to the AO's order]. Upon such deposit the concerned appellate commissioner [CIT(A)-I] shall consider the petitioner's appeal on its merit and endeavour to dispose of it expeditiously and in any case within four months from today.

6. In the meanwhile, during the pendency of the appeal the recovery of the balance amount [i.e. ₹38 lakhs] and further amounts, indicated in the demand notice shall remain suspended.

7. The writ petition stands disposed of in the above terms.

Dasti.

S. RAVINDRA BHAT, J

PRATEEK JALAN, J

FEBRUARY 15, 2019
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