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

\+ W.P.(C) 13012/2019, CM APPL. 53041/2019

BDR BUILDERS AND DEVELOPERS PRIVATE LIMITED
..... Petitioner

Through: Mr. Balbir Singh, Sr. Adv. with Mr. Prakash Kumar, Ms. Monica Benjamin Mr. Sanjay Bansal and Ms. Rashmi Singh,Advs.

versus

ASSISTANT COMMSSIONER OF INCOME TAX, CENTRAL CIRCLE-15, NEW DELHI ..... Respondent

Through: Mr. Kunal Sharma, Sr. Standing counsel along with Mr. Parth Semwal, Jr. Standing counsel.

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

O R D E R

% 09.01.2020

1. The petitioner has preferred the present writ petition to assail the notice issued under Section 148 of the Income Tax Act (hereinafter referred as 'the Act') dated 31.03.2019, relevant to the assessment year (AY) for 2012-13 and the order dated 15.10.2019 disposing of the objections preferred by the petitioner preferred to the said notice.

2. The petitioner also assails the re-assessment proceedings initiated by the aforesaid notice for the AY 2012-13. The writ petition was initially heard by this Court on 19.12.2019. The submission advanced on behalf of the petitioner on the said date was that the approval of the PCIT under Section

151 of the Income Tax Act had not been provided to the petitioner, despite being claimed by the respondents that it was enclosed with the order disposing of all the objections. It was also the grievance of the petitioner that the objections had not been dealt with adequately. Consequently, this Court had directed the respondents to produce the original records on the next date of hearing for perusal of this Court, including the approval obtained from the PCIT. We also permitted that the assessment proceedings may go on and the reassessment order may be passed, however, the same was not to be given effect.

3. The respondents have produced the original record which shows that the approval of the PCIT has indeed been obtained on 30.03.2019 prior to the issuance of the impugned notice dated 31.03.2019. The assessing Officer (AO) has now passed the re-assessment order.

4. We have heard learned counsels at some length. One of the submissions of Mr. Balbir Singh, learned senior counsel for the petitioner is that while passing the assessment order, the AO has not dealt with various submissions of the petitioner. There may be merit in this submission of the petitioner, however, we do not wish to examine the same any further at this stage, considering the fact that the petitioner has statutory right of the appeal to assail the re -assessment order before the CIT (A) and, if necessary even before the ITAT. Though, it is open to the petitioner to press this petition, to independently assail the notice under Section 148 of the Act irrespective of the fact that the assessment order has been passed, Mr. Balbir Singh, on instruction states that the appellant would be satisfied, if the appellant is

permitted to raise all its pleas before the CIT (A), including in relation to the validity of the notice issued under Section 148 of the Act which may be decided on merits. He submits that in the meantime, the demand that may be raised by the petitioner in pursuance of the re-assessment order dated 27.12.2019, be not given effect to.

5. We are inclined to accept the submission of the Mr. Singh looking into the overall facts and circumstances of the case. We accordingly dispose of this petition with liberty to the petitioner to avail of its statutory right of appeal in respect of the re-assessment order dated 27.12.2019 before the CIT (A). Demand, if any, raised in consequence of the said re-assessment order shall however not be enforced till the decision of the appeal by the CIT (A). We make it clear that we have made no observations on the merits of the case one way or another and all pleas and defences of the petitioner as well as the revenue are preserved. The CIT (A) shall pass an order dealing with all the submissions of the petitioner including in relation of the validity of the notice under Section 148 of the Act. We however vacate the interim order passed by us on 19.12.2019. Consequently, the re-assessment order becomes effective from today.

VIPIN SANGHI, J

SANJEEV NARULA, J

JANUARY 09, 2020
Pallavi