

\$~4

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Decision delivered on: 02.06.2021

+

W.P.(C) 4814/2021

DJ SURFACTANTS

..... Petitioner

Through: Mr. V. Lakshmikumaran, Mr. S.
Vasudevan and Mr. Shashank
Sharma, Advocates.

versus

NATIONAL E-ASSESSMENT CENTRE, INCOME TAX
DEPARTMENT, NEW DELHI & ORS. Respondents

Through: Mr. Zoheb Hossain, Senior Standing
Counsel for Revenue.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MR. JUSTICE TALWANT SINGH

[Court hearing convened via video-conferencing on account of COVID-19]

RAJIV SHAKDHER, J. (ORAL):

1. On previous date, i.e., on 03.05.2021, we had, *inter alia*, made the following observations, which are relevant for the disposal of the writ petition: -

“2. Mr. V. Lakshmikumaran, who appears for the petitioner, says that there has been a breach of the principles of natural justice, and therefore, the impugned assessment order deserves to be quashed. In this behalf, Mr. Lakshmikumaran has alluded to the following dates and events:

(i) Show cause notice was issued to the petitioner on 01.03.2021, along with the draft assessment order of even date. As per the said show cause notice, the petitioner was required to file a response by 08.03.2021, as to why the assessment should not be completed as per the draft assessment order.

(ii) The petitioner sought a week's accommodation to respond, as the queries raised in the aforementioned show cause notice required time to gather the relevant material. This request was made on 08.03.2021. Since no response was received from the Assessing Officer (in short 'AO'), the petitioner, by way of abundant caution, filed a reply to the said show cause notice on 12.03.2021. Furthermore, in the reply, a request was made for grant of a personal hearing in the matter.

(iii) The impugned assessment order was passed on 13.03.2021, without having regard to the aforesaid reply dated 12.03.2021 submitted by the petitioner.

3. A perusal of the impugned assessment order shows that the AO has made an addition to the petitioner's declared income of Rs.9,56,00,000/- under Section 68 of the Income Tax Act, 1961 (in short "the Act") concerning the assessment year 2018-2019. The addition has been made on account of purported unexplained, unsecured loans.

3.1. It is Mr. Lakshmikumaran's contention that, the petitioner had, *via* the material placed before the AO, along with its reply dated 12.03.2021, explained and attempted to establish the genuineness of the unsecured loans received by the petitioner.

4. Mr. Zoheb Hossain, who appears on advance notice on behalf of the revenue, on the other hand, says that the addition was made to the petitioner's declared income because of the dissonance between the audit report and balance sheet of the petitioner concerning unsecured loans pertaining to the financial year in issue, i.e., 2017-2018.

4.1 In this behalf, Mr. Hossain has drawn our attention to

paragraph 5.1 of the impugned assessment order wherein, the unsecured loans, as per the audit report, are shown as Rs.11,55,35,000/-, while unsecured loans in the balance sheet, are shown as Rs.5,33,18,001/- in respect of the financial year in issue, i.e., 2017-2018.

5. Be that as it may, it is quite evident that the AO has not taken into account the explanation and the material placed before him by the petitioner, along with its reply dated 12.03.2021. This aspect is brought to fore, if one were to peruse paragraph 4 of the impugned assessment order. For the sake of convenience, the same is extracted hereinafter:

“4. Before finalizing the assessment, the assessee has been given one more opportunity and calling for the assessee’s explanation by issuance of Show cause Notice as to why assessment should not be completed as per Draft Assessment Order vide notice no. DIN: ITBA/AST/F/143(3)(SCN)/2020-21/1031115346(1) dated 1/03/2021 and compliance date was 08/03/2021. Since there was no compliance from the assessee, it is presumed that the assessee has nothing to say in the matter and accordingly assessment order has been passed based on the details available on record.”

[Emphasis is ours]

5.1. Furthermore, as noticed above, although, a personal hearing was sought by the petitioner, the same was not granted by the AO.

6. Given these circumstances, we are of the view, that the petitioner has been able to establish, at least at this stage, a *prima facie* case in its favour.

7. Accordingly, issue notice. Mr. Hossain accepts service on behalf of the respondents/revenue.

7.1. Let the counter-affidavit be filed within three weeks from

today. Rejoinder thereto, if any, will be filed before the next date of hearing.

8. In the meanwhile, there shall be a stay on the operation of the impugned assessment order till further orders of the Court.

9. List the matter on 02.06.2021.”

2. Since then, a counter-affidavit has been filed on behalf of the respondent/revenue wherein, *inter alia*, in paragraph 19 (See page 141 of the paper book), the following has been stated:

“19. That without prejudice to the above contentions, it is submitted that, if this Hon’ble Court is of the view that the assessee’s reply/submission dated 12.03.2021 should nevertheless be considered, then this Hon’ble Court may remand the matter to the assessing officer for consideration of the reply submitted on 12.03.2021 and the assessment may be directed to be completed in a time bound manner as considered appropriate by this Hon’ble Court, in the interest of justice.”

3. Having regard to the aforementioned assertion made in the counter-affidavit, filed on behalf of the respondent/revenue, we had put to Mr. V. Lakshmikumaran, who appears for the petitioner, as to whether it would suffice if we were to set aside the impugned order, and direct the Assessing Officer (in short “AO”) to consider the petitioner’s reply to the show cause notice-cum-draft assessment order, dated 12.03.2021.

4. Mr. Lakshmikumaran says that such a direction would satisfy the petitioner. Therefore, the assessment order, passed under Section 143(3) of the Act, dated 13.03.2021, is set aside.

4.1 The AO will be at liberty to pass a fresh order, after considering the reply/submissions, filed by the petitioner, dated 12.03.2021. The AO will

accord a personal hearing to the authorized representative of the petitioner, and for this purpose, he/she will indicate, in writing, the date and time of the hearing. The AO will transmit this information *via* the registered e-mail ID of the petitioner. Furthermore, the A.O. will ensure that the link for the hearing is also sent to the petitioner.

4.2 Needless to add, the AO will pass a speaking order, a copy of which, will be supplied to the petitioner.

5. The writ petition and pending application shall stand disposed of in the aforesaid terms.

RAJIV SHAKDHER, J

TALWANT SINGH, J

JUNE 2, 2021/*mr*

Click here to check corrigendum, if any