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

% ***Date of decision: 12.05.2021***

\+ **W.P.(C) 4988/2021 and CM APPL. 15291/2021**

ROMANO BUILDTECH PVT LTD .....Petitioner

Through: Mr. Gautam Jain, Advocate.

versus

UNION OF INDIA & ANR. .....Respondents

Through: Mr. Farman Ali with Mr. Athar Raza Farooquei, Advocates for respondent no.1/UOI.
Mr. Sunil Agarwal, Sr. Standing Counsel for respondent no.2/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. This writ petition is directed against the assessment order dated 12.04.2021. The impugned assessment order concerns the assessment year 2018-2019.

2. On the previous date, i.e., 26.04.2021, when the matter came up before us, for the first time, we had issued notice to the respondents and the following aspects were recorded. These aspects, in essence, captured the core grievance of the petitioner:

> "2. Mr. Gautam Jain, who appears on behalf of the petitioner-assessee, says that a notice dated 02.04.2021 has been served on the petitioner concerning the assessment year (in short "AY") 2018-2019 to show cause as to why the

assessment should not be completed in consonance with the draft assessment order.

2.1 Mr. Jain goes on to state that the response to the said show cause notice had to be served on the revenue by 05.04.2021.

2.2 It is Mr. Jain"s contention that since the timeframe accorded to respond was short, a request for extension of time was made via the designated portal on 05.04.2021. Mr. Jain states that time was sought to respond to the said show cause notice till 19.04.2021.

3. We are informed that the impugned assessment order was passed on 12.04.2021 in disregard of the request made for accommodation by the petitioner.

4. A perusal of the impugned assessment order dated 12.04.2021, *inter alia*, discloses that the assessing officer has proceeded on the basis that there was no response given by the petitioner-assessee to the aforesaid show cause notice. There is no reference, it appears, in the impugned assessment order to the fact that a request for accommodation was made.

5. On being queried, Mr. Jain says that no communication had been sent by the revenue to the petitioner-assessee till 19.04.2021 that its request for accommodation had been declined.

6. Issue notice to the respondents.

7. Mr. Farman Ali accepts service on behalf of respondent no.1. Likewise, Mr. Abhishek Maratha accepts service on behalf of respondent no.2/revenue.

7.1. Counter affidavit(s) shall be filed within two weeks from today. Rejoinder(s) thereto, if any, will be filed before the next date of hearing.

8. Given the foregoing, presently, we are inclined to stay the operation of the impugned assessment order dated 12.04.2021. It is ordered accordingly."

3. Mr. Sunil Agarwal, who appears on behalf of the contesting respondent, i.e., respondent no.2, says that prior to the issuance of the show-cause notice cum draft assessment order dated 02.04.2021, opportunities were granted to the petitioner which were not availed.

3.1 In this context, Mr. Agarwal says, an opportunity was granted, as far back as in December 2020.

3.2 Mr. Gautam Jain, on the other hand, says that what is in issue is: once a show-cause notice cum draft assessment order was issued to the petitioner, it was logical that the petitioner was required to respond to the same, and therefore, what happened prior to the issuance of the show-cause notice cum draft assessment order is not material, insofar as the instant writ action is concerned.

3.3 Mr. Jain also goes on to state that because of the difficulties faced by the petitioner, on account of COVID-19 crisis, a short accommodation was sought, by submitting an application, on 05.04.2021. Mr. Jain says that *via* the said application, which was admittedly received by respondent no. 2, accommodation sought was only till 19.04.2021.

3.4 It is, therefore, Mr. Jain's submission that the assessing officer proceeded to pass the impugned assessment order, without dealing with the request, for accommodation.

4. We may note that no counter-affidavit has been filed on behalf of the respondents.

5. Having heard learned counsel for the parties and perused the record, we are inclined to allow the writ petition as, according to us, once a request for accommodation was made, it was incumbent upon the assessing officer to deal with the same, and thereafter, take next steps in the matter, albeit, as per law.

6. Therefore, the petitioner, to our minds, is correct, in submitting that no opportunity was given to respond to the show-cause notice cum draft assessment order dated 02.04.2021.

7. In these circumstances, we are inclined to set aside the impugned assessment order dated 12.04.2021. It is ordered accordingly. Liberty is, however, given to the assessing officer to pass a fresh assessment order, after giving an opportunity to the petitioner, to respond to the show-cause notice cum draft assessment order dated 02.04.2021.

7.1 To hasten the proceedings, it has been suggested by Mr. Agarwal that the petitioner can proceed to file a response immediately, and submit the same with the assessing officer. It is directed accordingly.

7.2 The petitioner will file its response within two weeks of receipt of a copy of this order. The concerned assessing officer will grant a personal hearing to the authorized representative of the petitioner, albeit, via the videoconferencing mechanism. In this behalf, the assessing officer will issue a written notice, via e-mail, to the petitioner, setting out therein, the date and time of the hearing. A link, to enable the convening of the videoconferencing hearing, shall also be provided.

7.3 The assessing officer will, thereafter, proceed to pass a fresh assessment order, after having considered the objections, if any, placed on record by the petitioner.

8. The writ petition is disposed of in the aforesaid terms. Pending application shall also stand closed.

RAJIV SHAKDHER, J.

TALWANT SINGH, J.

MAY 12, 2021
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Click here to check corrigendum, if any