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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Decision delivered on: 10.05.2021

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W.P.(C) 5234/2021, CM Nos. 16065-67/2021

KBB NUTS PRIVATE LIMITED

.....Petitioner

Through: Mr. Ajay Vohra, Senior Advocate with
Mr. Rohit Jain and Mr. Aniket D.
Agrawal, Advocates.

versus

NATIONAL FACELESS ASSESSMENT CENTRE DELHI
(EARLIER NATIONAL E-ASSESSMENT CENTRE DELHI) &
ANR.

.....Respondents

Through: Ms. Vibhooti Malhotra, 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):

CM No. 16066/2021

1. Allowed, subject to the petitioner curing the deficiencies referred to in the captioned application within three days of this Court resuming its normal functioning.

CM No. 16067/2021

2. Allowed, subject to just exceptions.

W.P.(C) 5234/2021, CM No. 16065/2021

3. Issue notice.

3.1. Ms. Vibhooti Malhotra, who appears on advance notice, accepts

service on behalf of the respondents.

3.2 In view of the order that we propose to pass, Ms. Vibhooti Malhotra says, she does not wish to file a counter-affidavit in the matter, and that she will proceed on the basis of the record presently made available with the Court.

4. The instant writ petition is directed against the assessment order dated 22.04.2021, passed by respondent no. 1, under Section 143(3) read with Section 144B of the Income Tax Act, 1961 (in short “the Act”). The impugned assessment order concerns the assessment year (in short ‘AY’) 2017-2018. Furthermore, the petitioner also seeks setting aside of the notice of demand of even date, i.e., 22.04.2021, issued under Section 156 of the Act, as well as the notice of the same date issued for initiation of penalty proceedings under Section 274 read with Section 270A and 271 AAC (1) of the Act.

4.1 Briefly, the grievance articulated and the assertions made on the behalf of the petitioner are as follows:

(i) The petitioner claims that the return of income for the concerned AY, i.e., 2017-2018 was filed on 30.11.2017, and that thereupon, a notice under Section 143(2) of the Act was issued by respondent no. 2. This notice, according to the petitioner, was issued on 26.09.2018.

(ii) The said notice, the petitioner claims, was followed by a notice issued under Section 142(1) of the Act, on 16.10.2019. The petitioner avers that a reply to the said notice was filed, *via* the designated e-portal, on 07.12.2019.

(iii) Evidently, the petitioner’s case was referred to the Transfer Pricing Officer (in short ‘TPO’) under Section 92 CA (1) of the Act.

(iii)(a) Resultantly, the assessment proceedings were kept in abeyance, for the period spanning between December 2019 and January 2021.

(iv) It appears that, thereafter, notices were once again issued under Section 142(1) of the Act, between 15.02.2021 and 07.04.2021 by the Deputy Commissioner of Income Tax, Circle-3, Amritsar (in short 'DCIT'). The petitioner claims that, in response to the said notices, requisite information and documents sought for were submitted, as on the earlier occasion, *via* the e-portal.

(v) It is also averred by the petitioner that a show-cause notice, along with the draft assessment order dated 19.04.2021, was served on the petitioner by respondent no. 1, whereby, the petitioner was called upon to file its response by 23:59 hours on 21.04.2021.

(vi) It is the petitioner's case that the said show cause notice was received by it *via* e-mail on 20.04.2021 at 03:06 hours. Since the time for compliance was short, the petitioner, it appears, filed an application *via the* e-portal, seeking a day's adjournment, i.e., till 22.04.2021. The petitioner claims that no response was received by it with respect to the request for adjournment.

(vii) The petitioner avers that respondent no. 1, as noticed above, passed the impugned assessment order on 22.04.2021. The petitioner also states that since it had not received a response *qua* the request for adjournment, the objections to the aforementioned show-cause notice were filed on 22.04.2021 at 15.22 hours.

4.2 In effect, based on the aforesaid facts and circumstances, the petitioner claims that there has been a breach of the principles of natural justice. It is the petitioner's case that the objections filed on 22.04.2021 were not taken into account by respondent no. 1 before passing the impugned assessment order.

4.3 The impugned assessment order has not only resulted in an enhanced imposition of demand of approximately Rs.15.62 crores towards tax but has

also, as noticed above, led to initiation of penalty proceedings. The impugned assessment order has pegged the petitioner's taxable income at approximately Rs.19.19 crores.

5. Ms. Malhotra, on the other hand, submits that, only because there was no formal response to the request for adjournment, the petitioner could not have assumed that the time to respond to the aforesaid show cause notice would not be extended. Ms. Malhotra contented that, as a matter of fact, in this case, although, the reply had to be filed by 21.04.2021, the respondent no. 1 waited till 22.04.2021, to pass the impugned assessment order.

5.1. This argument of Ms. Malhotra, to our minds, would have perhaps jelled with us, if the impugned assessment order was passed on 22.04.2021, albeit, after 23:59 hours. The petitioner has claimed that the objections *qua* the show cause notice dated 19.04.2021 were filed on 22.04.2021 at about 15:23 hours.

5.2. Therefore, without getting into the tenability of the objections on merits, in our view, the best course forward would be to set aside the impugned assessment order dated 22.04.2021, and have respondent no.1 pass a fresh assessment order after taking into account the objections filed *qua* the show cause notice dated 19.04.2021 on behalf of the petitioner. It is ordered accordingly.

6. The impugned assessment order is set aside. The respondent no. 1 will issue a notice *via* e-mail to the petitioner, and grant a personal hearing to the authorised representative of the petitioner, before proceeding to pass a fresh assessment order.

6.1. Needless to add, respondent no. 1 will consider the objections dated 22.04.2021, filed *qua* the show-case notice dated 19.04.2021.

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

RAJIV SHAKDHER, J

TALWANT SINGH, J

MAY 10, 2021/mr

[Click here to check corrigendum, if any](#)

