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

\+ W.P.(C) 5277/2021

RKKR FOUNDATION ..... Petitioner

Through: Mr. Rohit Jain and Mr. Aniket D. Agrawal, Advocates.

versus

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

Through: Mr. Puneet Rai, Senior Standing Counsel.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW
HON'BLE MR. JUSTICE AMIT BANSAL

O R D E R

% **12.05.2021**

[VIA VIDEO CONFERENCING]

C.Ms. No. 16238/2021 & 16239/2021(both for exemption)

1. Allowed, subject to just exceptions and as per extant rules.

2. The applications are disposed of.

W.P.(C) 5277/2021 & C.M. No. 16237/2021(for stay)

3. This petition, under Article 226 of the Constitution of India, impugns the order dated 30th April, 2021, of assessment post scrutiny, of the return of income filed by the petitioner for the assessment year 2018-19.

4. The petitioner, claiming to be a charitable society registered under Section 12A and Section 80G of the Income Tax Act, 1961, filed the return of income for the assessment year 2018-19, showing the taxable income as NIL and claiming exemption under Sections 11 and 12 of the Act. The return of income was selected for scrutiny and on 23rd September, 2019,

notice under Section 143(2) of the Act was issued to the petitioner and according to the petitioner, the petitioner, from time to time, supplied documents sought by the respondent no. 1 National Faceless Assessment Centre, Delhi. On 22nd April, 2021, the respondent no. 1 served the petitioner with a notice to show cause by 27th April, 2021 as to why the assessment of the petitioner for the said year be not completed as per draft assessment order enclosed therewith.

5. According to the petitioner, the time given to the petitioner to show cause was virtually of three days only, excluding Saturday and Sunday therefrom and the petitioner, owing to the prevalent Covid-19 pandemic, was unable to show cause within the said time, and on 27th April, 2021 sent a request for adjournment. However, on 30th April, 2021 as aforesaid, the impugned assessment order was passed.

6. Instead of availing the remedy of appeal, this writ petition impugning the assessment order, has been filed.

7. On enquiry, both, the counsel for the petitioner as well as the counsel for the respondents appearing on advance notice state that they are also not aware why this petition has been listed before this Bench, instead of before the Roster Bench i.e. the Tax Bench. Be that as it may, the counsel for the respondents contends that since the petitioner is an assessee in Chandigarh, the petition filed before this Court is not maintainable and is liable to be rejected. It is also contended that similar issue/s as raised in this petition, is/are arising in different High Courts and which are taking their respective views in the matter.

8. We have however enquired from the counsel for the respondents, that once the respondents have introduced the scheme of faceless assessment

through the respondent no. 1 National Faceless Assessment Centre at Delhi, how can the respondents object to the jurisdiction of this Court being invoked, irrespective of the locate/situate of the assessee. Attention of the counsel for the respondents is drawn to ***Kusum Inglots & Alloys Ltd. Vs. Union of India*** (2004) 6 SCC 254 where it was held that petition under Article 226 of the Constitution of India against an order or a finding of a Court or Tribunal or executive authority situated at Delhi, is maintainable at Delhi, though this Court, in exercise of discretion under Article 226 of the Constitution of India and invoking the doctrine of *forum non conveniens*, may refuse to entertain the same and ask the petitioner to approach the appropriate Court. It was further held that when the original authority is constituted at one place and the appellate authority is constituted at another, a writ petition would be maintainable at both the places. It was yet further held that as the order of the appellate authority (in that case) constitutes a part of cause of action, a writ petition would be maintainable in the High Court within whose jurisdiction it is situate, having regard to the fact that the order of the appellate authority is also required to be set aside and as the order of the original authority merges with that of the appellate authority. Reference in this regard may also be made to ***Cement Workers' Mandal Vs. Global Cements Limited (HMP Cements Limited)*** (2019) 20 SCC 517, holding, (a) Article 226 (2) of the Constitution empowers the High Court to entertain the writ petition if the cause of action to file such writ petition against the respondents in the said writ petition has arisen wholly or in part within the territorial jurisdiction of that High Court; and, (b) Clause (2) further empowers the High Court to issue any order, direction or writ as provided in Clause (1) of Article 226, in such a writ petition, notwithstanding that seat of Government or Authority against whom the writ petition is filed, does not fall within the territories of the High Court in which the writ petition is filed but falls in the territories of another High Court. In the recent judgment in ***Maharashtra Chess Association Vs. Union of India*** (2020) 13 SCC 285 also, the argument that the jurisdiction under Article 226 of the High Court of Bombay stood ousted because of the parties having agreed to the jurisdiction of the Courts at Chennai, was rejected and it was held that once the High Court of Bombay had jurisdiction, merely because another High Court also had jurisdiction and the parties had agreed to the jurisdiction of that High Court, was only a factor to be considered in the exercise of discretion, whether to entertain the writ petition in that High Court or not.

9. However it is deemed appropriate that rather than this Bench, which does not have taxation matters on its roster, hearing and deciding the said question, the matter be considered by the Roster Bench dealing with taxation matters, so that there is a consistency of opinion inasmuch as the question is likely to arise in many cases and if we proceed and take a view and the Roster Bench is of a different view, the need for referring the matter to a larger Bench, delaying the disposal of the matter, may arise.

10. Subject to the orders of Hon'ble the Chief Justice, list this petition before the Roster Bench, on 17th May, 2021.

RAJIV SAHAI ENDLAW, J

AMIT BANSAL, J

MAY 12, 2021/sr