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

+ **W.P.(C) 5361/2021**

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Date of decision: 19.05.2021

SDS INFRACON PRIVATE LIMITED Petitioner

Through: Mr. Kapil Goel, Adv.

versus

NATIONAL E-ASSESSMENT CENTRE DELHI Respondent

Through: Mr. Sunil Agarwal, Sr. Standing
Counsel with Mr. Tushar Gupta, Adv.

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.16575/2021

1. Allowed, subject to just exceptions.

CM No.16576/2021

2. The prayer made in the captioned application seeks extension of time for filing notarised affidavits and *vakalatnama*, accompanying the writ petition, and depositing of court fee. The captioned application is disposed of with a direction to the applicant/petitioner to deposit the requisite court fee and file the said affidavits and *vakalatnama*, within three days of the resumption of the normal and usual work pattern by this court.

W.P.(C) No.5361/2021 & CM No.16574/2021 [Application filed on behalf of the petitioner seeking stay on the operation of the impugned assessment order dated 17.04.2021 and subsequent proceedings thereto]

3. Via this writ petition, challenge has been laid to the assessment order dated 17.04.2021, passed by the respondent, under Section 143(3) read with Section 144B of the Income Tax Act, 1961 (in short 'the Act'). Consequential reliefs have also been sought, *inter alia*, that the respondent/revenue should be restrained from collecting the disputed demand. The assessment order concerns the assessment year (in short 'AY') 2018-2019.

4. Briefly, the grievance of the petitioner is that against its returned loss of Rs.9,35,218/- for the AY 2018-2019, the respondent has made a humongous addition of Rs.20,57,63,618/-, without any factual and legal basis.

4.1. The petitioner avers that the addition concerns interest on unsecured loans taken by the petitioner from five parties, whose details are given in paragraph 2 of the impugned assessment order.

4.2. It is the petitioner's case that the unsecured loans from the said parties were taken several years ago, which were assessed under Section 143(3) of the Act, in the AYs 2014-2015, 2015-2016, 2016-2017 and 2017-2018. According to the petitioner, in none of these AYs, any addition *qua* interest on unsecured loans was made by the assessing officer (in short 'AO'). Therefore, the petitioner's argument is that the AO has failed to follow the well-settled principle of consistency and uniformity in the AY in issue, i.e., 2018-2019.

4.3. This apart, Mr. Kapil Goel, who appears on behalf of the petitioner, says that, what is not discernible from the impugned assessment order, is, the provision to which recourse has been taken by the AO in making the addition. According to Mr. Goel, the AO could have either taken recourse to Section 36(1)(iii), or Section 37 of the Act.

4.4. It is also Mr. Goel's contention that, the show cause notice-cum-draft

assessment order dated 08.04.2021, is at variance with the impugned assessment order. According to Mr. Goel, in the said show cause notice-cum-draft assessment order, there was no reference made with respect to inquiry initiated with the lenders; which is the route adopted by the AO while passing the impugned assessment order.

4.5. At this juncture, it would be relevant to note that the AO seems to have issued notices to the lenders under Section 133(6) of the Act to seek information, and thereafter, gone on to conclude that the interest on unsecured loans deserves to be added to the petitioner's returned loss.

4.6 Furthermore, Mr. Goel says that the petitioner was not given an opportunity to explain its case.

5. Upon, being queried, Mr. Goel fairly concedes, in the reply dated 12.04.2021, the petitioner had not sought for a personal hearing.

5.1. Insofar as the other aspect is concerned, that the show cause notice-cum-draft assessment order is at variance with what has been noted in the impugned assessment order, we are of the view that notices issued to the lenders under Section 133(6) of the Act, seeking information were part of the inquiry being carried out by the AO. The fact that the lenders did not reply to the notices can not necessarily lead to the conclusion that the said transaction was not genuine, especially, when it had been subjected to scrutiny in the previous AY. That being said, it is hard to agree, at this point, with Mr. Goel that this, by itself, would be a material variation between the contents of the show cause notice-cum-draft assessment and the impugned assessment order.

5.2. We may also observe that, the mere fact that the lenders have not shown the interest received by them on unsecured loans, as income in their accounts, cannot be the sole basis for reaching a conclusion that the loan

transactions were not genuine. The petitioner says that, to prove the genuineness of the loan transactions, it had submitted to the AO, the bank statements showing date of receipt of the loan amounts, the TDS certificates, loan confirmation letters, and the income tax returns of the lenders.

6. Having said so, in our view, it is still not a case, which requires our interference in a writ action, as every error committed by an AO, qua facts or in law, need not necessarily be a jurisdictional error. In the facts of this case, we have not been able to reach a conclusion that there is a jurisdictional error. The AO had the jurisdiction. The AO may have committed certain errors that, necessarily, would not call for our intervention in a writ action.

7. Given the aforesaid, Mr. Goel says that he will withdraw the instant writ petition, and take recourse to an alternate remedy as may be available in law.

7.1. The only concern that Mr. Goel expresses, is with regard to the condition of pre-deposit [which is equivalent to the prescribed percentage of disputed tax demand], if the petitioner is to take recourse to an alternate remedy. Mr Goel says since the demand is huge, the pre-deposit will be substantial. We are told that the tax demand made against the petitioner is pegged at Rs.8,14,90,030/-.

7.2. Having taken note of this submission, Mr. Sunil Agarwal, learned senior standing counsel, who appears on advance notice on behalf of the respondent/revenue, says that the petitioner can always make a request for waiver of condition of pre-deposit.

8. In the aforesaid circumstances, the writ petition is dismissed as withdrawn, as prayed. Consequently, pending interlocutory application is closed.

8.1. The petitioner will have liberty to take recourse to the appropriate statutory remedy.

8.2. The petitioner may, if so advised, move an appropriate application before the concerned authority for waiver of condition of pre-deposit. Once such an application is filed, the concerned authority will endeavour to dispose of the same, at the earliest, though not later than eight weeks from the date, the application is received. In case, the application, is rejected, the petitioner will have liberty to approach the Court.

9. It is made clear that, the observations, made by us hereinabove, are tentative, and will not have any impact on the merits of the case. The concerned appellate forum will render the decision uninfluenced by the observations made hereinabove.

RAJIV SHAKDHER, J

TALWANT SINGH, J

MAY 19, 2021/pmc

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