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

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Date of decision: 27.05.2021

+ **W.P.(C) 5491/2021**

MS LOKESH CONSTRUCTIONS P LTD

.....Petitioner

Through: Mr. Gagan Kumar with Mr. Ashish
Parashar, Advocates.

versus

THE ASSISTANT COMMISSIONER OF INCOME TAX

..... Respondent

Through: Ms. Vibhooti Malhotra, Sr. Standing
Counsel.

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 APPL. 17023/2021

1. Allowed, subject to just exceptions.

CM APPL. 17024/2021

2. The prayer made in the captioned application is to grant exemption from filing requisite court-fee and sworn/notarised/affirmed affidavit. The captioned application is disposed of with a direction to the petitioner to place on record the duly sworn/notarised/affirmed affidavit and to deposit the requisite court-fee, within three days of the resumption of the normal and usual work pattern by this court.

W.P.(C) 5491/2021 and CM APPL. 17022/2021 *[Application filed on behalf of petitioner, under Section 151 of the Civil Procedure Code, 1908, seeking stay on the operation of order passed by respondent, dated 07.04.2021.]*

3. Via this writ petition, challenge has been laid to the assessment order dated 07.04.2021, passed under Section 143(3) read with Section 143(3A) & 143(3B) of the Income Tax Act, 1961 (in short, 'the Act'), as also the consequential notice of demand issued under Section 156 of the Act, and notice for initiation of penalty proceedings issued under Section 274 read with Section 270A of the Act.

4. To be noted, the impugned assessment order concerns Assessment Year (AY) 2018-2019.

5. The principal grievance of the petitioner is that, the impugned assessment order was passed without issuance of a show cause notice-cum draft-assessment order.

6. Issue notice.

7. Ms. Vibhooti Malhotra, accepts notice on behalf of the respondent/revenue.

7.1 Ms. Malhotra says that, in view of the directions that we propose to pass, she does not wish to file a reply and will argue the matter based on the record, presently, available with the Court.

7.2. Accordingly, with the consent of the counsel for the parties, the writ petition is taken up for hearing and final disposal.

8. At the outset, Ms. Malhotra, fairly, draws our attention to the judgement passed by this Court, today, in W.P. (C) 5552/2021 [listed on our board today as Item No. 28], the ratio of which, according to her, will apply, to this matter, as well.

9. As indicated above, the respondent/revenue passed the impugned assessment order, without issuance of a show cause notice-cum-draft assessment order.

10. It is required to be noted that initially, the petitioner had declared its income as Rs.87,55,390/-; which was revised to Rs.73,59,500/-.

11. Via the impugned assessment order dated 07.04.2021, an addition of Rs.13,95,890/-, has been made to the declared income of the petitioner.

12. To our minds, since there was a variation in the declared income, the respondent was required to issue a show cause notice-cum-draft assessment order, in consonance with the provisions of Section 144B of the Act and the Faceless Assessment Scheme, 2019. [See: Judgement dated 27.05.2021, passed in W.P. (C) No. 5552/2021, titled *YCD Industries vs. National Faceless Assessment Centre, Delhi*]

13. Accordingly, the impugned assessment order, and the consequential notices issued, i.e., notice of demand issued under Section 156 of the Act, and notice for initiation of penalty proceedings issued under Section 274 read with Section 270A of the Act, are set aside.

14. Liberty is, however, given to the respondent/revenue to pass a fresh assessment order, albeit, as per law.

15. The respondent/revenue will grant a personal hearing to the authorised representative of the petitioner.

16. For this purpose, the respondent/revenue will convene a hearing *via the* videoconferencing mechanism.

17. The respondent/revenue will also indicate the date and time of the hearing, well in advance, to the petitioner *via its* registered e-mail id.

18. The writ petition is disposed of in the aforesaid terms. The pending application shall stand closed.

RAJIV SHAKDHER, J.

TALWANT SINGH, J.

MAY 27, 2021
sh/tr

Click here to check corrigendum, if any