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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) 5552/2021**

YCD INDUSTRIES

.....Petitioner

Through: Mr. Deepkaran Dalal, Advocate.

versus

NATIONAL FACELESS ASSESSMENT CENTRE, DELHI

.....Respondent

Through: Mr. Ruchir Bhatia, 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. 17212/2021

1. Allowed, subject to just exceptions.

CM APPL. 17213/2021

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) 5552/2021 and CM APPL. 17211/2021 [Application filed on behalf of petitioner, under Section 151 of Code of Civil Procedure, 1908, seeking stay on the operation of order passed by respondent, dated 20.04.2021]

3. The principal grievance of the petitioner, is that, contrary to the mandate of Section 144B of the Income Tax Act, 1961 (in short, 'the Act'), and the Faceless Assessment Scheme, 2019 (in short, 'the Scheme'), no show cause notice-cum-draft assessment order was served on the petitioner, before the passing of the impugned assessment order dated 20.04.2021, as also the impugned notices issued under Section 156 and Section 274 read with Section 270A of the Act, of even date.

4. Issue notice.

5. Mr. Ruchir Bhatia, accepts notice on behalf of the respondent/revenue.

5.1. Mr. Bhatia says that, in view of the directions that we propose to pass, he does not wish to file a reply and will argue the matter based on the record, presently, available with the Court.

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

7. The record shows that the petitioner had filed his return *qua* the Assessment Year (AY) 2018-2019 on 30.10.2018. *Via* this return, the petitioner had declared a loss of Rs.58,43,378/-.

8. It appears that the petitioner was issued a notice under Section 143(2) of the Act, on 22.09.2019.

9. Furthermore, it is the petitioner's case that it was informed, on 15.10.2020, that the assessment would be completed under the Scheme.

10. It is also the petitioner's case that notice, under Section 142(1) of the

Act was issued on 09.12.2020, to which, the petitioner filed a reply dated 07.01.2021, followed by an additional reply dated 18.01.2021.

11. It appears, thereafter, that the respondent/revenue directed the petitioner, *via* notice dated 08.02.2021, to explain its position, with regard to the unsecured loan and the increase in share capital and share application money, qua the assessment year in issue. In sum, the petitioner was required to satisfy the respondent/revenue as to the genuineness of these transactions.

12. The petitioner claims that necessary information was submitted to the respondent/revenue, on 20.02.2021.

13. It appears that respondent no. 2, thereafter, passed the impugned assessment order on 20.04.2021.

13.1. *Via* the impugned assessment order, an addition of Rs.90,25,535/- was made to the petitioner's declared loss.

13.2. Furthermore, the petitioner was assessed to tax under Section 115BBEE of the Act.

13.3. The petitioner's income, chargeable to tax, was pegged at Rs.90,00,000. Consequently, according to the petitioner, a tax demand, which included demand towards interest, was crystalized as Rs.81,43,220.

14. Mr. Bhatia, who appears on behalf of the respondent/revenue says that, before issuance of the impugned assessment order, several opportunities were given, and therefore, the case set up on behalf of the petitioner that there has been a breach of principles of natural justice, is not tenable.

15. Mr. Deepkaran Dalal, who appears on behalf of the petitioner, contends to the contrary.

16. Having heard the learned counsel for the parties and perused the

record, in our view, the principles of natural justice have been violated in this case. The reason why we say so is set forth hereafter.

16.1. The statute [i.e., Section 144B(1)(xiv), (xv), (xvi)(b) and (xxii)] provides for issuance of a show cause notice-cum-draft assessment order, and an opportunity to the petitioner/assessee to respond to the same where income of the assessee is varied by the respondent/revenue. Admittedly, the petitioner's income was varied to its prejudice with the addition of Rs. 90,25,535/-. As a matter of fact, had the show cause notice cum draft assessment been served on the petitioner, its authorised representative could have requested for a personal hearing in the matter. The respondent/revenue, to our minds, could not have side-stepped such safeguards put in place by the legislature.

16.2. The justification proffered by Mr. Bhatia that notices were issued prior to the passing of the impugned assessment order, does not impress us. This submission flies in the face of the schematic design of the statute.

17. Accordingly, the impugned assessment order and the notice issued under Section 156 and Section 270A read with Section 274 of the Act are set aside.

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

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

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

18.3. 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.

19. 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