$~26 (2021)

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

% *Date of decision: 11.10.2021*

\+ **W.P.(C) 11634/2021**

ARVIND KUMAR ..... Petitioner

Through: Mr. Arvind Kumar with Ms. Devina Sharma, Advocate.

versus

UNION OF INDIA ..... Respondent

Through: Mr. Nitin Khanna, Advocate.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MR. JUSTICE TALWANT SINGH
[Physical Court Hearing]

RAJIV SHAKDHER, J.: (ORAL)

CM APPL. 35948/2021

1. Allowed, subject to just exceptions.

W.P.(C) 11634/2021

2. With the consent of counsel for the parties, the writ petition is taken up for hearing and final disposal, at this stage itself.

3. This writ petition is directed against an order dated 22.03.2021, passed by the Central Administrative Tribunal [in short, "the Tribunal"] in O.A No.643/2021.

3.1. The record shows that, the petitioner had approached the Tribunal, to assail the charge-memo dated 30.07.2020 served upon him by the concerned authority, in exercise of powers under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 [in short "1965 Rules"].

3.2. The record also shows that, the charge veered around the deduction allowed by the petitioner, amounting to Rs. 98,50,000/-, under Section 80-IB(10) of the Income Tax Act, 1961 [in short, "the Act"] qua the assessee going by the name of Alliance Nirmaan Limited, concerning the assessment year (AY) 2009-2010.

3.3. It is the petitioner's claim that, while passing the assessment order under Section 143(3) of the Act dated 27.05.2011, he had taken into account the fact that, the assessee had built flats, and therefore, according to him, the assessee was eligible for claiming deduction under the aforementioned provision.

3.4. It was the petitioner's case before the Tribunal and before us as well that, insofar as the earlier assessment years, i.e., AY 2007-2008 and 2008-2009 are concerned, the deduction claimed by the assessee under Section 80-IB(10) of the Act was disallowed, as the assessee had claimed the same vis-a-vis parcels of land. According to the petitioner, it is for this reason that, the order passed by the then Assessing Officer, disallowing deduction under Section 80-IB(10) for AY 2007-2008 and 2008-2009 was sustained by the Commissioner of Income Tax (Appeals) [in short "CIT(A)"], and the Income Tax Appellate Tribunal [in short "ITAT"].

3.5. Insofar as AY 2009-2010 was concerned, the CIT, in exercise of powers under Section 263 of the Act, had concededly, even according to the petitioner, interceded, *via* order dated 18.05.2012, and held that, the assessment order passed by the petitioner was erroneous and prejudicial to the interest of the revenue.

3.6. The petitioner's asserts that the case set up by him, which was not examined by the Tribunal, was simply this: the subject assessment order was passed in good faith, in exercise of the adjudicatory powers conferred upon him by the Act and that it was passed neither on account of corrupt motive or recklessly.

3.7. In other words, according to the petitioner, since he had passed the assessment order in his role, as a *quasi*-judicial authority, he could not have been served with the chargesheet for performing such functions unless his action could be slotted into exceptions adverted hereinabove.

4. The Tribunal, unfortunately, has not discussed any of the aforementioned aspects in the impugned order. The rationale provided by the Tribunal is contained in paragraph 4 of the impugned order, which is extracted hereafter for the sake of convenience:

> *"4. It is no doubt true that the allegation was in relation to an order passed by the applicant in the quasi judicial capacity. The fact, however, remains that there cannot be any hard and fast rule as regard, initiation of disciplinary proceedings, in relation to the orders passed in quasi-judicial proceedings. If the department is able to point out any serious infirmity or illegality, and point any extraordinary features, it can certainly be examined. At the same time, the approach is required to be a bit guarded. Mere existence of a second view cannot be a ground to initiate proceedings. In the instant case, the respondents pointed out some abnormal features. We*

> *do not propose to deal with the same lest it impacts the inquiry. We do not find any serious infirmity in the impugned charge memo. The applicant can offer his explanation. There is no reason to believe that the Disciplinary Authority would not appreciate the relevant facts."*

5. In our opinion, the manner in which the matter has been dealt with by the Tribunal, is less than satisfactory. The action of the respondent which was impugned by the petitioner before Tribunal has serious ramifications for petitioner, and thus, could not have dealt with the matter so nonchalantly.

5.1 Accordingly, the impugned order is set aside.

5.2. The Tribunal will hear the petitioner afresh in O.A No.643/2021, as also the counsel for the respondents, upon issuing notice in the said O.A.

5.3. The Tribunal will, thereafter, pass a speaking order.

5.4. Needless to add, if the petitioner is aggrieved by the order passed by the Tribunal, he will have liberty to take recourse to an appropriate remedy, albeit, as per law.

6. We may also note that, the charge memo was served upon the petitioner after nearly a decade, since the time the petitioner had passed the assessment order i.e., on 27.05.2011.

6.1. The petitioner claims that, the charge memo was served on him to deprive him of promotion to the next rank.

6.2. We are told that, the Departmental Promotion Committee (DPC) meeting for the next post i.e., the post of Joint Commissioner is likely to convene in December, 2021.

6.3. Thus, in order to hasten the proceedings, the petitioner will appear before the concerned Registrar of the Tribunal on 21.10.2021. The Registrar of the Tribunal will place the matter before the concerned Bench, at the earliest, though not later than one week.

6.4. The Tribunal will endeavour to conclude the proceedings by December, 2021.

7. The Parties will act on the digitally signed copy of this order.

RAJIV SHAKDHER, J.

TALWANT SINGH, J.

OCTOBER 11, 2021/tr

Click here to check corrigendum, if any