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

% *Date of decision: 23.01.2023*

\+ **W.P.(C) 777/2023**

GI STAFFING SERVICES PRIVATE LIMITED ..... Petitioner

Through: Mr Salil Kapoor with Ms Ananya Kapoor, Mr Tarun Chanana and Mr Sumit Lalchandani, Advocates.

versus

NATIONAL FACELESS ASSESSMNET CENTRE, DELHI ..... Respondent

Through: Mr Abhishek Maratha, Sr. Standing Counsel.

CORAM:
HON'BLE MR JUSTICE RAJIV SHAKDHER
HON'BLE MS JUSTICE TARA VITASTA GANJU
[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J.: (ORAL)

CM APPL. 3021/2023

1. Allowed, subject to just exceptions.

W.P.(C) 777/2023 and CM APPL. 3020/2023 ***[Application filed on behalf of the petitioner seeking interim relief]***

2. Issue notice.

2.1 Mr Abhishek Maratha accepts notice on behalf of the respondent/revenue.

3. In view of the directions that we propose to pass, Mr Maratha says that counter-affidavit is not required to be filed. Therefore, with the consent

of the counsels for the parties, the writ petition is taken up for final hearing and disposal, at this stage itself.

4. The petitioner is, principally, aggrieved by the assessment order dated 26.12.2022 passed under Section 143(3), read with Section 144B of the Income Tax Act, 1961 [in short, "the Act"]. Since notice of demand and notice of penalty of even date i.e., 26.12.2022, have also been issued, these notices are also assailed by way of the present writ petition.

4.1. To be noted, we are concerned, in this writ action, with Assessment Year (AY) 2021-22.

5. The record, as presently made available to the court, shows that the petitioner claims that it is a "staffing company which provides temporary & permanent staffing solutions to its clients as per their business needs."

6. It is the petitioner's case that 97.63% of the turnover consists of cost of service, which includes payment made towards salaries/wages and statutory payments such as EPF, ESIC, Professional Taxes, LWF and withholding tax. Therefore, the petitioner avers that for the Financial Year (FY) in issue i.e., FY 2020–21, the gross profit margin is only 2.43%.

7. We may note that the petitioner was issued a show cause notice dated 14.12.2022 proposing upward variation in the declared income. The record shows that the petitioner filed its reply dated 16.12.2022, wherein, *inter alia,* it had indicated that if any clarification was required, it could be furnished either *via* video conferencing or in person.

8. Mr Salil Kapoor, who appears on behalf of the petitioner, says that since the record pertaining to the employees was voluminous and it could not be uploaded on the designated portal. Mr Kapoor says if given an opportunity the petitioner would want to submit hardcopies as well as soft

copies of the relied upon documents.

8.1 It is Mr Kapoor's contention that if the authorized person of the petitioner were to be heard, then possibly the Assessing Officer (AO) would have a better perception of the matter.

8.2. In sum, Mr Kapoor says that the AO has failed to appreciate the nature of petitioner's business and the cost component embedded in the turnover.

9. Mr Abhishek Maratha, senior standing counsel, who appears on behalf of the respondent/revenue, says that, since an assessment order has been passed, the petitioner should take recourse to the statutory remedy.

9.1. In other words, Mr Maratha, says that an appeal should have been preferred by the petitioner and not a writ action, as has been done in this case.

10. In our view, the AO would be required to grant personal hearing in the matter, in view of the provisions of Section 144B(6)(vii) of the Act. The petitioner, in the reply dated 16.12.2022, had offered to submit clarifications, either through video conferencing (VC) or in person, *albeit*, through its authorized representative.

11. Given this position, it appears that, had the AO granted a personal hearing to the authorized representative of the petitioner, several issues raised in the writ petition could have been dealt with, before framing the impugned assessment order.

12. Therefore, for the aforesaid reasons, we are inclined to set aside the impugned assessment order dated 26.12.2022.

12.1 It is ordered accordingly.

13. Consequently, the impugned notice of demand and penalty will also

collapse.

14. The AO will, however, be at liberty to frame fresh assessment *qua* the petitioner, concerning the AY in issue.

14.1. However, before the AO proceeds further, he will issue a notice to the petitioner indicating the date and time of the hearing. The notice will also provide a hyperlink to the petitioner, so that the hearing can take place *via* VC.

14.2. That said, given the fact that the record is voluminous, the AO will be at liberty to grant personal hearing, as well.

15. Needless to add, the AO will complete the aforementioned exercise at the earliest, though not later than ten weeks from the date of receipt of the copy of the judgment.

16. The writ petition is disposed of in the aforesaid terms. Consequently, the pending interlocutory application shall stand closed.

17. Parties will act, based on the digitally signed copies of the judgement.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

JANUARY 23, 2023 / tr

Click here to check corrigendum, if any