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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 27.03.2023

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W.P.(C) 1922/2022

MODI INDUSTRIES LIMITED

..... Petitioner

Through: Mr Rohit Jain & Mr Saksham
Singhal, Advs.

versus

DEPUTY COMMISSIONER OF INCOME TAX & ORS.

..... Respondents

Through: Mr Abhishek Maratha, Sr. Standing
Counsel with Mr Akshat Singh, Jr.
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)

1. The first substantive hearing in the matter was held on 04.02.2022. On that day, after hearing counsel for the parties briefly, we had etched out the contours of the case. For the sake of convenience, the relevant part of the order dated 04.02.2022 is set forth hereafter:

“2. This writ petition is directed, inter alia, against a notice issued under Section 148 of the Income Tax Act, 1961 [in short “the Act”]. The impugned notice is dated 31.03.2021 and concerns the assessment year (AY 2014-15.

3. Mr Rohit Jain, who appears on behalf of the petitioner, submits that an assessment under Section 143(3) of the Act was framed on 29.12.2016 i.e., before the issuance of the impugned notice.

3.1 According to Mr Jain, the assessment cannot be reopened, after four years have passed, unless the Assessing Officer (AO) is able to show that the petitioner did not disclose fully and truly all material facts.

3.2 At the heart of the matter, according to Mr Jain, is the purported dissonance in the sales turn over as shown in the Tax Audit Report and in the Income Tax Return [ITR] filed by the petitioner.

3.3 Mr Jain says that, after reasons were sought from the AO for initiating the process of reassessment, objections were filed by the petitioner vide letter dated 09.07.2021, whereby facts and figures were provided to demonstrate that there was in fact no discrepancy as alleged.

3.4 In other words, according to Mr Jain, the sales turnover in the Tax Audit Report and the petitioner's ITR was reconciled.

3.5 As a matter of fact, in this case, Mr Jain says that notice was issued to the petitioner under Section 154 of the Act, in response to which the petitioner had submitted the reconciliation statement.

3.6 It is emphasized by Mr Jain that the order, whereby objections to reopening of the assessment have been disposed of i.e., order dated 29.12.2021, none of the objections raised by the petitioner have been dealt with. [See Annexure-B, appended on page 95 of the case file.]

4. We have perused the order dated 29.12.2021.

4.1. Prima facie, we are of the view that the objections filed by the petitioner on 09.07.2021 have not been dealt with by the Assessing Officer.

5. Therefore, according to us, the matter requires further examination.

6. Issue notice.

6.1. Mr Abhishek Maratha accepts notice on behalf of the respondents/revenue.

6.2. Counter-affidavit(s) will be filed by the respondents/revenue within the next four weeks. Rejoinder(s) thereto, if any, will be filed before the next date.

7. In the meanwhile, there shall be a stay on the reassessment proceedings which have been initiated, via impugned notice dated 31.03.2021."

2. As would be evident, we had granted four weeks to the respondent/revenue to file a counter-affidavit in the matter.

2.1 On the next returnable date, i.e., 07.09.2022, once again further four weeks were granted to respondent/revenue to file the counter-affidavit. On that date, interim order dated 04.02.2022 was made absolute during the pendency of the writ petition and accordingly, interlocutory applications were disposed of.

3. It is in this backdrop that the matter has been listed before the court today, i.e., 27.03.2023. There is a typographical error in the order dated 07.09.2022, as it indicates that the returnable date is 25.03.2022, instead of

27.03.2023.

4. The record shows that the counter-affidavit has not been filed, despite opportunities being given in that behalf.

5. As noted by us on 04.02.2022, the objections filed with regard to the re-opening of the petitioner's assessment have not been dealt with by the Assessing Officer (AO). In view of the fact that no counter-affidavit has been filed, we are constrained to set aside the impugned notice dated 31.03.2021, as the assertions made in the writ petition would have to be taken as correct.

6. We may also note that it is the petitioner's say that on the very same grounds as those raised for the Assessment Year (AY) in issue, reopening of the assessment for AY 2015-16 was dropped. For the sake of convenience, paragraph 2 of the order dated 15.03.2022, which focuses on the issue, based on which, reassessment was triggered, is set forth hereafter:

"The case of the assessee for AY 2015-16 was re-opened for assessment u/s 143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter known as 'the Act') due to reason that there was difference in the turnover as per the Tax Audit Report and as declared in the ITR filed by the assessee."

7. The fact that the explanation of the petitioner was accepted by the AO is evident on perusal of paragraph 5 of the very same order. Accordingly, the said paragraph is also extracted hereafter:

"After taking into account all relevant material available on record, assessment order is finalized u/s 143(3) r.w.s. 147 r.w.s. 144B of the Act without drawing any adverse inference."

8. It is also stated by counsel for the petitioner that *qua* the same issue, reassessment was sought to be triggered *qua* AY 2016-17, which by an order of even date i.e., 15.03.2022 was also dropped.

9. Given the foregoing position, we are inclined to set aside the

impugned notice dated 31.03.2021 and the impugned order dated 29.12.2021.

10. The AO will be at liberty to take next steps in the matter. However, if he does seek to recommence the reassessment proceedings, he will take into account not only the objections but also the fact that *qua* the very same issue, reassessment proceedings were dropped *vis-a-vis* AYs 2015-16 and 2016-17.

11. The decision with regard to recommencement of the assessment/reassessment proceedings will be taken by the AO within four weeks from the receipt of a copy of this judgment. In such an eventuality, the petitioner will be given liberty to file fresh objections and a hearing in the matter. Till such time, the interim order passed in the writ petition will continue to obtain.

12. Writ petition is disposed of in the aforesaid terms.

13. Registry will scan and upload the orders dated 15.03.2022 passed *qua* the AYs i.e., AY 2015-16 and 2016-17 so that they remain embedded in the case file.

(RAJIV SHAKDHER)
JUDGE

(TARA VITASTA GANJU)
JUDGE

MARCH 27, 2023 / r