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

% *Date of decision: 26.04.2023*

\+ **W.P.(C) 5325/2023**

ALM INDUSTRIES LIMITED ..... Petitioner

Through: Mr Kapil Goel, Advocate.

versus

UNION OF INDIA AND ORS. ..... Respondents

Through: Mr Vardhman Kaushik, Advocate for respondent no.1/UOI.
Mr Vipul Agrawal, Sr. Standing Counsel with Mr Gibran Naushad and Ms Shakshi Sherwal, Jr. Standing Counsel for respondent nos. 2 to 4.

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. 20749/2023

1. Allowed, subject to just exceptions.

W.P.(C) 5325/2023 and CM APPL. 20748/2023 ***[Application filed on behalf of the petitioner seeking interim relief]***

2. Issue notice.

2.1 Mr Vardhman Kaushik accepts notice on behalf of the respondent no.1/UOI, while Mr Vipul Agrawal, senior standing counsel, accepts notice on behalf of the respondent nos.2 to 4/revenue.

3. In view of the directions that we propose to issue, counsel for the respondents say that reply is not required to be filed, and they will argue the matter, based on the record presently made available with the court.

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

5. This writ petition is directed against the assessment order dated 25.03.2023 passed under Section 144B/147 of the Income Tax Act, 1961 [in short, "the Act"]; show-cause notice dated 06.03.2023 issued under Section 144B of the Act; notice dated 29.03.2022 issued under Section 148 of the Act; notice dated 11.03.2022 issued under Section 148A(b) of the Act and order dated 27.03.2022 issued under Section 148A(d) of the Act.

5.1 To be noted, we are concerned with Assessment Year (AY) 2018-19.

6. The short issue which arises for consideration in the present writ petition concerns the applicability of the condition contained in circular no. 8/2006 dated 06.10.2006[1], which requires production of a certificate from a Veterinary Doctor, that the person referred to in the certificate is a producer of meat, and that "slaughtering" was done under the supervision of the doctor who had issued the certificate.

7. Mr Kapil Goel, who appears on behalf of the petitioner/assessee, says

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[1] For the sake of convenience, the relevant parts of circular no. 8/2006 dated 06.10.2006 are extracted below

***3.** The Board after examination of the issue is of the view that any person, by whatever name called, who buys animals from the farmers, slaughters them and then sells the raw meat carcasses to the meat processing factories or to the traders/retail outlets would be considered as producer of livestock and meat.*

4**.** *The benefit of rule 6DD of the Income-tax Rules, 1952 shall be available to the person referred to at para 3 above subject to furnishing of the following :—*

(i) A declaration from the person receiving the payment that he is a producer of meat;

(ii) A confirmation that the payment, otherwise than by an account payee cheque or account payee bank draft,was made on his insistence; and

(iii) ***A further confirmation from a veterinary doctor certifying that the person specified in the certificate is a producer of meat and that slaughtering was done under his supervision****.*

[Emphasis is ours]

that this condition is beyond the periphery of the provisions of Rule 6DD(e)(ii) of the Income Tax Rules, 1962 [in short, "1962 Rules"]. The said rule reads as follows:

*"**6DD.** No disallowance under sub-section (3) of section 40A shall be made and no payment shall be deemed to be the profits and gains of business or profession under sub-section (3A) of section 40A where a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account [account payee bank draft or use of electronic clearing system through a bank account or through such other electronic mode as prescribed under rule 6ABBA, exceeds ten thousand rupees]*[2]

e. *where the payment is made for the purchase of—*
(i) agricultural or forest produce; or
(ii) the produce of animal husbandry (including livestock, meat, hides and skins) or dairy or poultry farming; or
(iii) fish or fish products; or
(iv) the products of horticulture or apiculture,
to the cultivator, grower or producer of such articles, produce or products;"

8. In support of his plea, Mr Goel has, *inter alia,* relied upon the judgment of the Division Bench of the Bombay High Court, dated 13.03.2018, passed in ITA No. 1224/2015, titled ***Principal Commissioner of Income Tax-I, Thane v. M/s. Gee Square Exports***. Para 8 of the said judgment of the Bombay High Court reads as follows:

> *"8. We note that the basis of the Revenue seeking to deny the benefit of the proviso to Section 40A(3) of the Act and Rule 6DD(e) of the Rules is non satisfaction of the condition provided in CBDT Circular No.8 of 2016. In particular, non furnishing of a Certificate from a Veterinary Doctor. The proviso to Section 40A(3) of the Act seeks to exclude certain categories / classes of payments from its net in circumstances as prescribed. Section 2(33) of the Act defines "prescribed" means prescribed by the Rules. It does not include CBDT Circulars. It is a settled position in law that a Circular issued by the CBDT cannot impose additional condition to the Act and / or Rules adverse to an assessee. In UCO Bank Vs. Commissioner of*

[2] Substituted from "account payee bank draft, exceeds twenty thousand rupees" by the Income Tax (Third Amendment) Rules, 2020, with effect from 29.01.2020

Income Tax, 237 ITR 889 @ 898, the Apex Court has observed "Also a circular cannot impose on the taxpayer a burden higher than what the Act itself, on a true interpretation, envisages". Thus, the view of the Tribunal that the CBDT Circular cannot put in new conditions for grant of benefit which are not provided either in the Act or in the Rules framed thereunder, cannot be faulted. More particularly so as to deprive the respondent assessee of the benefit to which it is otherwise entitled to under the statutory provisions. Needless to state it is beyond the powers of the CBDT to make a legislation so as to deprive the respondent assessee of the benefits available under the Act and the Rules. The respondent assessee having satisfied the requirements under Rule 6DD of the Rules, cannot, to that extent, be subjected to disallowance under Section 40A(3) of the Act. Besides, we may in passing point out that the impugned order of the Tribunal holds that a Certificate of Veterinary Doctor was rejected by the Authorities under the Act, only because it was not in proper form."

9. Evidently, the said judgment was carried in appeal by the respondents/revenue to the Supreme Court. The Supreme Court, however, rejected the Special Leave Petition (Civil) Diary No(s). 38352/2018, *via* order dated 13.11.2018.

10. On the other hand, Mr Agrawal says that the petitioner/assessee, in his response to the show cause notice issued under Section 148A(b), did not raise this contention, and as a matter of fact, relied upon the certificate issued by the Veterinary Doctor.

10.1 It is Mr Agrawal's stand that because specific certification was not available for each and every invoice, the Assessing Officer (AO) refused to grant the petitioner/assessee the benefit of Rule 6DD(e)(ii) of the 1962 Rules, read with circular no. 8/2006.

10.2 In other words, it is Mr Agrawal's contention that this aspect of the matter, i.e., that the said circular referred to hereinabove was beyond the provisions of the Rule, was never put to the AO by the petitioner/assessee, prior to approaching this court.

11. Having heard the learned counsel for the parties, what clearly emerges is that the petitioner/assessee has, apart from anything else, taken its own time to approach the court with regard to the submission which is articulated before us, i.e., that the condition incorporated in circular no. 8/2006 requiring issuance of a Veterinary Doctor certificate is beyond the ambit of Rule 6DD(e)(ii) of 1962 Rules. That said, it is an arguable submission which seems to have received the imprimatur of at least one High Court, i.e., Bombay High Court.

12. The fact that an alternate remedy, by way of an appeal is available, is not in dispute. That said, the only apprehension of the petitioner/assessee is that by invoking the aforementioned condition contained in circular 8/2006 read with provision of Section 40A(3) of the Act, almost the entire acquisition cost of the meat which is said to have been incurred by the petitioner/assessee has been disallowed.

12. It is thus the petitioner/assessee's submission that it has resulted in a humongous demand, amounting to Rs.1,55,82,39,210/-, being raised against the petitioner.

13. Mr Goel has submitted before us that if this demand was to be honoured, the petitioner/assessee would go out of business. It is also Mr Goel's contention that if an appeal has to be preferred, even 20% of the demand ordinarily claimed by the respondents/revenue as pre-deposit, would completely disable the petitioner/assessee's business.

14. As observed by us hereinabove, the submission raised before us by Mr Goel on behalf of the petitioner/assessee is an arguable point, which in the context of the facts obtaining in the present matter, is required to be examined. Therefore, this writ petition is disposed of, with the following

directions:

(i) The operation of the impugned assessment order/notices shall remained stayed for six (6) weeks, commencing from the date on which a copy of this order is received.

(ii) The petitioner/assessee will take recourse to an appropriate statutory remedy *qua* the impugned assessment order.

(iii) The petitioner/assessee will also be at liberty to move an application for stay of the operation of the impugned assessment order. The application will also be moved before the AO, within the aforementioned timeframe.

(iv) The interim protection granted by us will dissolve at the end of six weeks.

15. We make it clear that nothing stated hereinabove will impact the decision on the merits of the case, if the petitioner/assessee were to take recourse to a statutory remedy.

16. Parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

APRIL 26, 2023 / tr