$~17

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

% *Date of Decision: 31.05.2023*

\+ **W.P.(C) 5738/2023 & CM Appl.22474/2023**

SYNDICATE BUILDCON PRIVATE LIMITED ..... Petitioner
Through: Mr Akhilesh Kumar, Adv.

versus

PRINCIPAL COMMISSIONER OF INCOME TAX 7 & ORS. ..... Respondents
Through: Mr Puneet Rai, Sr Standing Counsel with Mr Ashvini Kumar and Ms Madhavi Shukla, Advs.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MR. JUSTICE GIRISH KATHPALIA

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

1. On the previous date, we had heard the counsel for the parties and captured the broad contours of the case. For the sake of convenience, the relevant parts of the previous order dated 03.05.2023, are extract hereafter:

"1. This writ petition concerns Assessment Year (AY) 2018-19
2. The record shows, that the reassessment proceedings have progressed to the stage of the assessment order. The assessment order passed in the petitioner's case is dated 17.03.2023.
2.1 The assessment order was passed under Section 147 read with Section 144B of the Act.
3. The principal allegation against the petitioner is, that it is a beneficiary of accommodation entry in the form of an unsecured loan.
3.1 It is the respondents/revenue's case, that one Mr Aditya Jain has provided the accommodation entry through various dummy entities

against the receipt of commission(s), which includes Odisha Finlease Private Limited [in short, "OFPL"].
3.2 OFPL is, according to the petitioner, a non-banking financial company.
4. The petitioner does not dispute the fact, that it received a loan from OFPL.
5. Mr Akhilesh Kumar, who appears on behalf of the petitioner, says that loan amounting to Rs.65 lakhs was received, albeit, in Financial Year (FY) 2015-16. Insofar as FY 2017-18 (AY 2018-19) is concerned, the petitioner only paid interest amounting to Rs.1,69,509/-.
5.1 It is also the petitioner's case, that the assessee has repaid the loan to OFPL via proper banking channel.
5.2 Mr Kumar says, that the Assessing Officer (AO) has taken the information available in Form 16A concerning payment of tax at source, and used the said information to trigger reassessment proceedings, by multiplying the interest amount with a factor of ten.
5.3 In this context, our attention has been drawn to page 107 of the case file, which alludes to Form 16A.
5.4 Inter alia, Mr Kumar says, that although a personal hearing was sought by the petitioner, the same was not granted by the AO.
5.5 In this context, our attention is further drawn to the document appended on pages 182-183 of the case file.
6. Accordingly, issue notice.
7. Mr Puneet Rai, learned senior standing counsel, accepts notice on behalf of the respondents/revenue.
7.1 Mr Rai says, that he will return with instructions, as to whether personal hearing was sought and granted in the matter.
8. At request, list the matter on 31.05.2023.
9. In the meanwhile, no precipitate action will be taken against the petitioner."

2. Mr Puneet Rai, learned senior standing counsel, who appears on behalf of the respondents/revenue, has returned with instructions. Mr Rai says that a personal hearing was not granted to the petitioner by the Assessing Officer (AO).

3. In these circumstances, as indicated in the previous order, we are inclined to set aside the assessment order.

3.1 It is ordered accordingly.

4. Liberty is, however, given to the AO to take next steps in the matter, *albeit*, as per law.

5. The writ petition is disposed of, in the aforesaid terms.

6. Pending application shall stand closed.

7. Consequently, interim order dated 03.05.2023 shall stand vacated.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

MAY 31, 2023/pmc