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

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Date of decision: 25.04.2023

+ **W.P.(C) 5272/2021**

CLH GASEOUS FUEL APPLICATIONS PVT LTD..... Petitioner

Through: Mr Sandeep Goel, Advocate.

versus

NATIONAL E ASSESSMENT CENTRE INCOME TAX
DEPARTMENT, NEW DELHI

..... Respondent

Through: Mr Kunal Sharma, Sr. Standing
Counsel with Ms Zehra Khan and Mr
Shubhendu Bhattacharya, 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 above captioned writ petition came up for hearing before the court for the first time on 12.05.2021. After hearing counsel for the parties at some length, the broad contours of the case were sketched. However, unfortunately up until now, the counter-affidavit has not been filed by the respondent/revenue.

1.1 For the sake of convenience, the relevant parts of the order dated 12.05.2021 are set forth hereafter:

"5. This writ petition is directed against the assessment order dated 22.04.2021.

5.1. To be noted, the assessment has been carried out under the Faceless Assessment Scheme, 2019. The instant petition concerns the assessment year [in short 'AY'] 2018-2019.

6. A perusal of the impugned assessment order shows that additions, under Section 68 of the Income Tax Act, 1961 [in short "the Act"], have been made in respect of share capital, share premium and unsecured loan, which are set out in paragraph 9 of the impugned assessment order.

6.1. The additions made by the Assessing Officer [in short 'AO'] to the declared income of the petitioner, amount to Rs.16, 83,95,000/-.

6.2. The AO has also disallowed prior period expenses, and directed disallowance under Section 36(1)(va) read with Section 2(24)(x) of the Act. In effect, the taxable income has been pegged, by the AO, at Rs.18,67,75,079/-.

6.3. Against this, a notice of demand, dated 22.04.2021, under Section 156 of the Act, has been issued. The demand raised is to the tune of Rs.16,91,13,470/-.

7. Mr. Kapil Goel, who appears on behalf of the petitioner, submits that apart from anything else, the AO has failed to take into account the Central Board of Direct Taxes ("CBDT") Instruction no. 20/2015, dated 29.12.2015. In particular, Mr. Goel relies upon paragraph 4 of the said instruction. For the sake of convenience, the same is extracted hereafter:

"4. The Board further desires that in all cases under scrutiny, where the Assessing Officer proposes to make additions or disallowances, the assessee would be given a fair opportunity to explain his position on the proposed additions/disallowances in accordance with the principle of natural justice. In this regard the Assessing Officer shall issue an appropriate show-cause notice duly indicating the reasons for the proposed additions/disallowances along with necessary evidences/reasons forming the basis of the same. Before passing the final order against the proposed additions/disallowances, due consideration shall be given to the submissions made by the assessee in response to the show-cause notice."

7.1. It is Mr. Goel's submission that, in terms of paragraph 4 of the said instruction, the AO was required to issue a show-cause notice qua each of the additions/disallowances made to the petitioner's declared income.

8. We may notice that, Mr. Kunal Sharma, who appears on advance notice on behalf of the respondent, says that, a perusal of the impugned assessment order would show that, not only a notice under Section 143(2) of the Act was issued but several questionnaires were

also served on the petitioner under Section 142(1) of the Act.

8.1. It is contended by Mr. Sharma that, in effect, the aforementioned steps taken by the AO, prior to passing the impugned assessment order, substantially, complied with the requirement of the show-cause notice, as envisaged under paragraph 4 of the CBDT instruction, dated 29.12.2015. In other words, according to Mr. Sharma, there has been no breach of the principles of natural justice.

9. Having heard the counsel for the parties and perused the record, what has also emerged is, that each of the notices issued by the AO, under Section 142(1) of the Act, was replied. This is evident upon a perusal of paragraph 2 of the impugned assessment order.

9.1. Broadly, the purpose of issuance of notice under Section 142(1) of the Act is, to gather information from the assessee. However, before an addition is made, it is evident that the CBDT instruction, dated 29.12.2015, requires issuance of a show-cause notice and an opportunity to be given to the noticee, i.e., the assessee to respond to the same. This step, it appears, at least at this stage, was not taken by the AO qua the petitioner.

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

10. Accordingly, issue notice.

11. Mr. Sharma accepts service on behalf of the respondent.

11.1. Counter-affidavit will be filed within six weeks from today. Rejoinder thereto, if any, will be filed before that next date of hearing.

12. In the meanwhile, there shall be stay on the operation of the impugned assessment order dated 22.04.2021.

13. List the matter on 25.08.2021."

2. Since the counter-affidavit is not on record, we have to assume that the assertions made in the writ petition are correct. As noticed on 12.05.2021, no show cause notice was issued to the petitioner, inconsonance with the provisions of the CBDT instructions dated 29.12.2015, which require not only issuance of show cause notice but also to accord opportunity to the assessee, i.e., the petitioner, to respond to the same. In effect, the petitioner asserts that no such steps were taken by the Assessing Officer (AO) in this regard.

3. Consequently, we are constrained to set aside the impugned assessment order. Liberty is, however, given to the AO to take next steps in

the matter, *albeit* as per law.

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

5. In case the AO decides to recommence proceedings, he will issue a show cause notice, accord liberty to file a response and also grant personal hearing to the authorized representative of the petitioner.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

APRIL 25, 2023 / tr