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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 08.11.2023

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W.P.(C) 5752/2021 & CM APPL. 18066/2021

FUJITSU INDIA PVT. LTD.

..... Petitioner

Through: Mr Deepak Chopra and Mr Rohan
Khare, Advs.

versus

DEPUTY COMMISSIONER OF
INCOME TAX 2.1 & ORS.

..... Respondents

Through: Mr Kunal Sharma, Sr Standing
Counsel with Ms Zehra Khan,
Standing Counsel for Revenue.
Mr Bhagvan Swarup Shukla, CGSC
with Mr Sarvan Kumar, Adv. for
UOI.**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 03.06.2021, after hearing the learned counsel for the parties, we had broadly etched out the contours of the controversy which arises between the parties in the matter. For the sake of convenience, the relevant part of the said order is set forth hereafter:

"2. Via this writ petition, challenge has been laid to the final assessment order dated 24.05.2021, concerning the assessment year ('AY') 2017-18, passed under Section 144C(3) read with Section 143(3) and Section 144B of the Income Tax Act, 1961 (in short 'the Act').

2.1. Besides this, there are other prayers also made in the writ petition, including a prayer for issuing a writ of mandamus, certiorari or any other appropriate writ to quash/set aside the Standing Order No. 1439(E) dated



31.03.2021, issued by the Central Government in exercise of its powers conferred under Section 250(6C) of the Act.

3. Mr. Deepak Chopra, who appears on behalf of the petitioner, says that the impugned final assessment order is flawed, broadly, for two reasons:

(i) Firstly, the statutory procedure prescribed under Section 144B of the Act was not adhered to, by the respondents/revenue.

(ii) Secondly, though, the period prescribed, under Section 144C(b) of the Act for filing objections to the draft assessment order dated 23.04.2021 had been extended, the impugned final assessment order dated 24.05.2021 was passed before the expiry of the said period.

3.1. In support of this plea, reliance is placed on the Central Board of Direct Taxes (in short „CBDT“) Circular no. 8/2021 dated 30.04.2021. The relevant part of the circular reads as follows:

“b) Objections to Dispute Resolution Panel (DRP) under Section 144C of the Income-tax Act, 1961, for which the last date of filing under that Section is 1" April 2021 or thereafter, may be filed within the time provided under that Section or by 31" May 2021, whichever is later;”

4. In this case, as indicated above, the draft assessment order under Section 144(C)(1) of the Act was passed on 23.04.2021.

4.1. As correctly submitted by Mr. Chopra, the thirty days provided for filing objections in the ordinary course, expired on 23.05.2021. However, on account of the provision contained in the aforementioned CBDT circular, the petitioner had time available to file its objections till 31.05.2021. As noted above, the final assessment order has been passed on 24.05.2021.

5. In these circumstances, we are inclined to issue notice. It is ordered accordingly.

5.1. Mr. Kunal Sharma accepts service on behalf of the respondents/revenue.

5.2. On steps being taken, notice shall be issued to respondent no. 1/UOI via all permissible modes including e-mail

6. Counter-affidavit(s) will be filed within four weeks. Rejoinder(s) thereto, if any, will be filed before the next date of hearing.

7. List the matter on 31.08.2021.

8. In the meanwhile, there shall be a stay on the operation of the impugned final assessment order, dated 24.05.2021. It is made clear that there shall also be a stay on enforcement of demand till further orders of the Court.”

2. Mr Kunal Sharma, learned senior standing counsel, who appears on behalf of the respondents/revenue, cannot but accept that the final



assessment order was passed before the extended time, as prescribed under the Central Board of Direct Taxes (CBDT) Circular No.8/2021 dated 30.04.2021, for filing objections had expired.

3. As noted above in paragraph 4.1 of the order dated 03.06.2021, the extended time for filing objections was to expire on 31.05.2021, whereas the final assessment order was passed on 24.05.2021.

4. Since these facts are not in dispute, according to us, the best way forward would be to set aside the final assessment order dated 24.05.2021, with liberty to the petitioner to file its objections with the Dispute Resolution Panel (DRP) within four weeks of receipt of a copy of the order passed today.

5. The objections, once filed, as per the timeframe given above, will be dealt with on merits by the DRP.

6. The writ petition is disposed of in the aforesaid terms.

7. Interim order dated 03.06.2021 shall stand vacated. Consequently, the pending application, i.e., CM No.18066/2021 shall stand closed.

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

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

NOVEMBER 8, 2023

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Click here to check corrigendum, if any