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

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Decision delivered on: 22.03.2023

+ **W.P.(C) 7176/2021 & CM No.22655/2021**

SHYAM COMMUNICATION SYSTEMS

..... Petitioner

Through: Mr Ajay Vohra, Sr Adv. with Mr
Rohit Jain, Mr Aniket D. Agrawal
and Mr Samarth Chaudhari, Adv.

versus

DEPUTY COMMISSIONER OF INCOME TAX Respondent

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

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. This writ petition is directed against the assessment order dated 22.04.2021 passed under Section 143(3) of the Income Tax Act, 1961 [in short, "Act"] concerning Assessment Year (AY) 2018-19.

1.1 Besides this, challenge is also laid to the notice of demand issued under Section 156 and notice initiating penalty under Section 274 read with Section 270A of the Act, both of even date, i.e., 22.04.2021.

2. The record shows that *via* the impugned assessment order, the Assessing Officer (AO) has added to the petitioner firm's taxable income Rs.23.06 crores received towards compensation received, by treating it as revenue received; and Rs.2,96,97,213/- on account of variance in turnover.

This addition was predicated on the difference between the turnover figures in the Income Tax Return (ITR) and in the GST-1/GST-3B return of the petitioner/assessee.

3. The record reveals that prior to the assessment order being passed, the AO on 04.03.2020 had issued a notice under Section 142(1) of the Act. The queries raised by the AO via said notice were part of the annexure appended thereto. For the sake of convenience, the same is extracted hereafter :

"1. You have introduced capital during the year which is very high as compared to the Profit after tax of the assessee. Please provide copy of ledger of capital account for the year and explain the source thereof.

2. You have disclosed low receipt from house property in ITR as compared to rental receipts in 26AS. Please provide the complete details of income from house properties mentioning the name, address, PAN, phone, email of the tenant along with the copy of registered rent agreements.

3. There is substantial variation in Turnover shown by assessee in ITR in comparison to Turnover shown in GST1/GST 3B return filed by the assessee. Please furnish copy of Personal Ledger Account (PLA), copy of Central excise return, copy of purchase ledger, copy of below mentioned Central Excise & Custom registers which is mandatory to maintain (if any):-

Stock Register, Input Credit Register , Capital Goods Stock Account, Capital Goods Credit Account. And please substantiate why the variation in Turnover shown by you in ITR is less than Turnover shown in GST1/GST 3B.

Please furnish copies of your VAT returns filed for four quarters (original as well as revised) for the period of FY-2017-18. If, VAT returns have been revised during the year, please furnish the reasons for the revision of VAT return."

4. In response to the said notice, the petitioner filed a reply which, we are told, was uploaded on the designated portal on 17.03.2021.

5. Via this reply, the petitioner/assessee had furnished the details of the capital account and the ledger account concerning all three partners.

5.1 In the interregnum, the AO on 22.02.2021 had also issued yet another notice under Section 142(1) of the Act, wherein several other queries were raised, which were part of the annexure appended to the said notice.

6. As would be evident from a bare perusal of the impugned assessment order, only two additions were made to the petitioner/assessee's income, as indicated hereinabove.

7. Mr Ajay Vohra, learned senior counsel, who appears on behalf of the petitioner/assessee, says that in the assessment order, while making two additions regarding the compensation received by the petitioner/assessee, in respect of the development agreement which had been cancelled, certain observations have been made, to the effect that relevant documents were not furnished.

8. It is Mr Vohra's contention that after issuance of notice dated 04.03.2020, the AO did not call upon the petitioner/assessee to furnish any documents.

8.1 All that, according to Mr Vohra, the petitioner/assessee was called upon to submit was the details of the capital account and the ledger account of the partners of the petitioner/assessee.

9. Insofar as the addition made regarding the variation in turnover is concerned, Mr Vohra submits that a reconciliation statement was furnished.

9.1 For this purpose, our attention is drawn to page 124 of the case file.

10. It is not in dispute that no personal hearing was granted to the authorized representative of the petitioner/assessee. The counter-affidavit filed on behalf of the respondent/revenue, *inter alia*, discloses that neither was any show cause notice issued nor was any hearing granted prior to framing of the assessment order. The reason furnished for non-issuance of

the show cause notice, as articulated in the counter-affidavit, is that the petitioner/assessee was indulging in deliberate procrastination.

10.1 It was further asserted in the counter-affidavit that the additions were made pursuant to the queries raised in the notice dated 04.03.2020.

11. Insofar as the other facet is concerned, i.e., that personal hearing was not granted, the counter-affidavit contains a rather general explanation, which for the sake of convenience is extracted hereafter :

“That the contents of Grounds P to Q are denied as false and incorrect. It is submitted that the time limit for completion of cases for the AO was 30.04.2020. During the month, AO was left with 132 cases to be complete the assessment, out of which 92 cases were time-barring by limitation on 30.04.2021. As stated in para-1 above 4 officials in the office of the AO found COVID -19 positive. Thereafter, on 18.04.2021, the AO itself got affected with COVID -19. Under these circumstances, the biggest concern of the AO was to complete the assessments. Further till the date of passing of order there was no such notification/press releases that the time limits will extend for one more time. Thus, the AO was justified in completing the assessment on 22.04.2021.”

12. Mr Abhishek Maratha, learned senior standing counsel, who appears on behalf of the respondent/revenue, says that since assessment order is passed, the court ought not to interdict the same, as an alternative remedy by way of an appeal is available to the petitioner/assessee.

13. We have heard learned counsel for the parties. According to us, the gravamen of the petitioner/assessee's case is that there has been an infraction of principles of natural justice. As noted above, the petitioner was issued a notice dated 04.03.2020 under Section 142(1) of the Act, whereby queries were raised, including queries regarding additions that were eventually made in the instant case.

14. Via this notice, insofar as addition *qua* compensation received by the petitioner/assessee was concerned, information was sought only *vis-à-vis* two aspects.

14.1 First, with regard to the capital account.

14.2 Second, with regard to the ledger account of the individual partners.

15. Insofar as the second aspect is concerned, i.e., variation in the turnover figures, as reflected in the ITR of the petitioner firm and in the returns filed under the Goods and Services Tax Acts, a reconciliation statement was furnished.

16. Concededly, the AO did not issue any other notice concerning these two additions. However, while passing the assessment order, the AO has found fault with the petitioner/assessee and observed the following with regard to the additions :

“From the contents of the above Note K-7 of the notes to account in the balance sheet it has been noticed that the alleged development agreement was executed by and entered into between the assessee firm M/s Shyam Communication Systems and M/s HMS Real Estate Pvt. Ltd. For undertaking the development of commercial complex on land area as per agreement. This note also explains that M/s HMS Real Estate Pvt. Ltd. Withdrew during the year under consideration and consequent thereto they paid compensation of Rs.30.40 crore to the land owners by way of settlement agreement to losses and damages. It is very strange that even after most reasonable opportunity was afforded to the assessee vide show cause notice dated 04/03/2020 to explain the increase in capital during the year under consideration the assessee has filed a reply after one year i.e. on 17/03/2021 but the assessee has not been able to explain the same satisfactorily as the reply filed by the assessee suffers from following legal infirmity:

i. The assessee has not filed the copy of agreement executed by the assessee firm and M/s HMS Real Estate Pvt. Ltd. For development of land to examine the relevant clauses of providing such huge compensation in case of withdrawal by the said company.

ii. The assessee has not filed any documentary evidence in the form of letter which provided for withdrawal by M/s HMS Real Estate Pvt. Ltd. Showing the reasons and the circumstances under which it withdrew from the work.

iii. *Assessee has not filed copy of settlement deed entered into by the assessee firm and the land owners for settlement.*

iv. *The assessee firm has not filed any documentary evidence to prove the impugned receipt was capital of the partners.*

It is therefore, clear that out of the total compensation amount of Rs.30.40 crore a sum of Rs.23,06,00,000/- was the compensation received by the assessee firm and balance of Rs.7,34,00,000/- belonged to the other parties mentioned in this note as land owners. Therefore, it is held that this is not a capital receipt but income of the assessee as the assessee firm has failed to prove in the absence of any documentary evidence, as to who were other land owners, but work was to be executed as per agreement, how much work was executed till the settlement for withdrawal by the other parties and what were the circumstances/reasons under which such huge compensation was paid by the departing parties to the assessment firm. In view of these facts a sum of Rs.23,06,00,000/- is treated as income of the assessee firm and is being added to its income during the year under consideration.

Addition: Rs.23,06,00,000/- ”

[Emphasis is ours]

17. Insofar as the other addition is concerned, the following was recorded:

“Vide query no.3 to questionnaire issued alongwith notice u/s 142(1) dated 04/03/2020, the assessee was requested to explain the substantial variation in turnover shown by it in the ITR in comparison to turnover shown in GST-1/GST-3B return filed by the assessee company. In response to this query the assessee vide its letter dated 17/03/2021 has filed the reconciliation as per Annexure-3 thereto. This reconciliation has been examined and it is seen that in the reconciliation chart turnover including exports as per Audited Financial Statement (for multi GSTIN units) has been shown at Rs.5,35,27,165/- and has made adjustment in the turnover due to the reason not listed at Sl. No. B to N in the said chart at Rs.2,96,97,213/-. But adjustments of this amount have been made have not been clarified by the assessee company. In the absence of such clarification the same adjustment is not being allowed meaning thereby that addition of Rs.2,96,97,213/- is being made to the income of the assessee company on account of variation in turnover shown by it in the ITR in comparison to turnover shown in GST-1/GST-3B return filed by the assessee company.

Addition: Rs.2,96,97,213/- ”

18. Admittedly, information in the form of documents, was sought by the AO which would shed light as to why cancellation of development agreement, was brought about.

18.1 Insofar as addition on account of variation in turnover was concerned; the petitioner sought to explain the variation by filing reconciliation statement. This was brushed aside by the AO by holding that an adjustment made while reconciling the turnover figure in the ITR with the turnover figure appearing under the GST-1/GST-3B return had not been clarified.

19. To our minds, had the AO granted personal hearing to the petitioner, some light may have been shone on this aspect of the matter.

20. According to us, the best way forward would be to set aside the impugned assessment order dated 22.04.2021.

21. It is ordered accordingly. Liberty is, however, given to the AO to pass a fresh assessment order. However, before passing a fresh assessment order, a notice shall issue which will specify the date and time when personal hearing could be granted to the authorized representative of the petitioner/assessee.

22. In case any material/information is required, a notice will indicate the same. The petitioner/assessee will furnish the information/material sought for by the AO, which is in its power and possession.

23. Needless to add, once this exercise is completed, the AO will pass an assessment order.

24. In case, the petitioner/assessee is aggrieved by the decision included by the AO, it will have liberty to take recourse to an appropriate remedy, *albeit* as per law.

25. The writ petition is disposed of in the aforesaid terms. Consequently, the notice of demand and the notice of penalty will collapse and are hereby set aside.

26. Resultantly, the pending application shall stand closed.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

MARCH 22, 2023

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Click here to check corrigendum, if any