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

% *Decision delivered on: 04.07.2023*

\+ **W.P.(C) 8788/2023**

BENGAL AND ASSAM COMPANY LTD. ..... Petitioner

Through: Mr V.P. Gupta and Mr Anunav Kumar, Advs.

versus

NATIONAL FACELESS ASSESSMENT CENTRE & ANR. ..... Respondents

Through: Mr Sanjay Kumar, Sr Standing Counsel with Ms Easha Kadiyan and Ms Hemlata Rawat, 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. Issue notice.

1.1 Mr Sanjay Kumar, learned senior standing counsel, accepts notice on behalf of the respondents/revenue.

2. Given the directions that we propose to issue, Mr Kumar says that he does not wish to file a counter-affidavit, and he will argue the matter based on the record presently available with the court.

2.1 Therefore, with the consent of learned counsel for the parties, the matter is taken up for hearing and final disposal at this stage itself.

3. This writ petition is directed against the assessment order dated

16.05.2023 passed by respondent no.1 under Section 147 read with Sections 144 and 144B of the Income Tax Act, 1961 [in short, "Act"].

4. The impugned assessment order concerns Assessment Year (AY) 2014-15.

5. Learned counsel for the petitioner submits that the statutory notices, that were required to be issued to the petitioner prior to the Assessing Officer (AO) taking recourse to the best judgment assessment route, had not been served on the e-mail address which was indicated by the petitioner, both at the time of filing the initial return, and thereafter, on the return filed pursuant to the notice issued under Section 148 of the Act.

6. The record shows that the petitioner was issued show cause notices dated 15.03.2023 and 02.05.2023, at the following e-mail address:

"upendra.gupta@jkmail.com"

[See Annexure P-12 & Annexure P-13 appended on pages 314 and 315 of the case file].

7. To be noted, the returns filed by the petitioner bear the following e-mail addresses:

"ukg@jkmail.com; mkhanna@jkmail.com"

[See Annexure P-15 and Annexure P-16 appended on pages 322 and 323 of the case file].

8. Furthermore, the record also shows that in response to the notice dated 13.01.2023 issued to the petitioner under Section 142(1) of the Act, a detailed reply was filed on 07.02.2023.

9. It is the petitioner's contention that had this reply been taken into account, the end result would have been different.

10. We may also note that the petitioner, in support of its plea that earlier notices were issued at one of the e-mail addresses which were operable, has sought to rely upon the documents marked as Annexure P-14 (colly.).

11. Having regard to the aforesaid, it appears that the AO, inadvertently, issued statutory show cause notices to the petitioner at the e-mail address, which was clearly not in use. The record reveals that the AO was aware of the e-mail addresses that the petitioner was using.

12. Given this position, Mr Kumar cannot but accept, that the requirement to serve statutory show cause notice, before taking recourse to best judgment assessment, has not fructified. The first proviso to Section 144 mandates issuance of a show cause notice before taking recourse to the best judgement route.

12.1 Therefore, for the reasons given hereinabove, the impugned assessment order is set aside.

12.2 Liberty is, however, given to the AO to pass a fresh assessment order. In this behalf, the AO will take next steps in law, as per the provisions of the Act, which would include the issuance of a formal show cause notice at the correct e-mail address.

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

14. Parties will act based on the digitally signed copy of the judgment.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

JULY 4, 2023
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