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

% *Date of decision: 31.07.2023*

+ **W.P.(C) 9970/2023**

DEVASAN INVESTMENTS PRIVATE LIMITEDPetitioner

Through: Mr Nischay Kantoor, Advocate.

versus

INCOME TAX OFFICER, WARD 7(1), DELHI & ORS.

..... Respondents

Through: Mr Sanjeev Menon, Standing Counsel for
revenue/respondent nos.1 to 4.

Ms Uma Prasuna Bachu, SPC for Union of
India/respondent no.5.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MR JUSTICE GIRISH KATHPALIA

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

RAJIV SHAKDHER, J.: (ORAL)

CM APPL. 38439/2023

1. Allowed, subject to just exceptions.

W.P.(C) 9970/2023 and CM APPL. 38438/2023 *[Application filed on
behalf of the petitioner seeking interim relief]*

2. Issue notice.

3. Mr Sanjeev Menon, learned standing counsel, accepts notice on
behalf of the respondent nos.1 to 4/revenue. Likewise, Ms Uma Prasuna
Bachu, learned senior panel counsel, accepts notice on behalf of respondent
no.5/revenue.

4. Given the directions that we propose to pass, Mr Menon says that he



does not wish to file a counter-affidavit in the matter and he will argue the matter based on the record presently available with the court.

4.1 Therefore, with the consent of the learned counsels for the parties, the writ petition is taken up for hearing and final disposal, at this stage itself.

5. This writ petition concerns Assessment Year (AY) 2013-14.

6. *Inter alia*, the petitioner seeks to assail the assessment order dated 24.05.2023. The principal ground on which the petitioner, for the moment, seeks to assail the impugned order concerns breach of principles of natural justice.

7. The record shows that a show-cause notice (SCN) dated 05.05.2023 was served on the petitioner proposing variation of taxable income. *Via* the SCN, the petitioner was called upon to submit its response by 08.05.2023 (11:46 hrs.).

8. The petitioner, *via* communication dated 10.05.2023, which was uploaded on the designated portal, sought a week's accommodation to file a reply.

9. This request, however, was not taken into account and the impugned assessment order was passed *qua* the petitioner. We are informed that the reply dated 10.05.2023 was filed on 11.05.2023. [See page 411 of the case file].

10. Mr Nischay Kantoor, who appears on behalf of the petitioner, says that there are the following two flaws in the assessment order:

- (i) First, the SCN did not grant the petitioner the minimum leeway of seven (7) days; contrary to the Standard Operating Procedure (SOP) adopted by respondent nos.1 to 4/revenue.
- (ii) Second, the Assessing Officer (AO) neither dealt with the petitioner's



request, nor did he take into account the reply filed on 11.05.2023. In support of this plea, Mr Kantoor has, *inter alia*, relied upon the judgment rendered by a coordinate bench [which included one of us i.e., Rajiv Shakhder, J.] in ***Indo Laminates Pvt. Ltd. v. Assessment Unit, Income Tax Department & Ors.*** 2023/DHC/000879.

11. Mr Menon, on the other hand, submits that although time was given to the petitioner to file a response on 08.05.2023, the reply was filed on 11.05.2023 which is why, perhaps, it was not taken into account by the AO while passing the assessment order.

12. Having heard the counsels for the parties, we are inclined to agree with Mr Kantoor that there has been an infraction of the SOP put in place by the respondent nos.1 to 4/revenue, as also the provision of Section 144B(6)(xi) of the Income Tax Act, 1961 [in short, “the Act”].

12.1 In sum, the AO was required to provide seven (7) days to enable the petitioner to file a response to the SCN. This aspect of the matter, as rightly pointed out by Mr Kantoor, was captured by us in ***Indo Laminates Pvt. Ltd.*** For the sake of convenience, the relevant observations made therein are set forth hereafter:

“14. Given the fact, that although the petitioner’s reply dated 08.12.2022 was on record, a show-cause notice dated 09.12.2022 was issued, without having regard to the reply, we are inclined to quash the impugned notices and order. There was, to our minds, clearly a failure to adhere to the directions contained in Clause N.1.3 of the Standard Operating Procedure (SOP) for Assessment Unit (AU) dated 03.08.2022; which required a minimum timeframe of seven days to be given to the notice i.e., the petitioner.

14.1 It is directed accordingly. The impugned notices and order are quashed.



14.2 Liberty is, however, given to the AO to carry out a de novo exercise, albeit, as per law.

14.3 To be noted, the said SOP has been framed in consonance with the provisions of Section 144B(6)(xi) of the Act.”

13. Thus, for the forgoing reasons, the impugned assessment order is set aside. Consequently, impugned notices of demand and penalty will also collapse.

14. The AO will, however, have liberty, like in the other case, to carry out the *de novo* exercise, *albeit*, as per law.

15. The writ petition is disposed of in the aforesaid terms. Pending application shall also stand disposed of.

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

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

JULY 31, 2023 / tr