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

% *Date of decision: 18.08.2023*

\+ **W.P.(C) 10939/2023**

ALLIED ENGINEERING WORKS PRIVATE LIMITED ..... Petitioner

Through: Mr Karanjot Singh with Mr S. Vasudevan, Advocates.

versus

NATIONAL FACELESS ASSESSMENT CENTRE DELHI (NFAC) & ANR. ..... Respondents

Through: Mr Vipul Agrawal, Sr. Standing Counsel with Mr Gibran Naushad and Ms Shakshi Shairwal, Standing Counsel.

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. 42388/2023

1. Allowed, subject to just exceptions.

W.P.(C) 10939/2023 and CM APPL. 42387/2023 ***[Application filed on behalf of the petitioner seeking interim relief]***

2. Issue notice.

3. Mr Vipul Agrawal, learned senior standing counsel, who appears on behalf of the respondents/revenue, accepts notice.

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

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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) 2021-22.

6. *Via* this writ petition, the petitioner seeks to assail the penalty order dated 23.06.2023, as also the consequential demand notice of even date, i.e., 23.06.2023.

7. Broadly, the impugned penalty order came to be passed because the petitioner had claimed excess deduction under Section 35(2AB) of the Income Tax Act, 1961 [in short, "the Act"], *vis-a-vis* expenditure incurred on research and development.

8. Concededly, the petitioner, in the AY in issue, i.e., AY 2021-22, was allowed to claim a deduction at the rate of 100% of the expenditure incurred. However, it ended up claiming deduction at the rate of 200%.

9. According to the petitioner, this was a mistake which occurred because the law was amended after AY 2017-18. It is also averred by the petitioner that between 2018-19 and 2019-20, the cap for deduction was pegged at 150%.

10. There are other reasons also which are adverted to in the writ petition. The main ground which has been raised before us is a breach of the principles of natural justice.

11. Learned counsel for the petitioner says that the impugned penalty order dated 23.06.2023 was passed without according personal hearing to the petitioner's authorized representative. In support of the plea that the

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petitioner sought personal hearing, our attention has been drawn to the screenshot of the designated portal on which the request was made. This fact which emerges from the record is not disputed by Mr Agrawal.

12. Having regard to the fact that personal hearing was not granted, we are inclined to set aside the impugned order and the consequential notice.

12.1 It is ordered accordingly.

12.2 Liberty is, however, given to the Assessing Officer (AO) to pass a fresh order after according personal hearing to the authorized representative of the petitioner.

12.3 For this purpose, the AO will issue a notice to the petitioner indicating the date and time of the hearing.

13. Needless to add, the AO will pass a speaking order which will deal with all contentions of the petitioner, including the contention that this was not a case of misreporting. According to the petitioner, the factum of deduction being claimed, *albeit* at the wrong rate, stood embedded in the return of income filed for the aforementioned AY.

13.1 A copy of the speaking order will be furnished to the petitioner.

14. Furthermore, the AO will also take a decision on the pending immunity application, albeit as per law.

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

16. It is also made clear, that since we have not dealt with the matter on merits, the directions issued today will not impact the order that the AO may pass.

17. Consequently, pending interlocutory application shall also stand closed.

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

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

AUGUST 18, 2023 / tr

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