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

% *Decision delivered on: 19.10.2023*

+ **W.P.(C) 17581/2022**

DLF HOME DEVELOPERS LTD ..... Petitioner

Through: Ms Kavita Jha and Mr Akash Shukla, Advs.

versus

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

Through: Mr Sanjeev Menon, 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):

1. The record shows that on 22.12.2022, when the writ petition had come up for hearing, we had, after hearing learned counsel for the parties, recorded the broad contours of the case. For convenience, the relevant parts of the said order are extracted hereafter:

> *"2. This writ petition broadly concerns interpretation of the provisions of Section 170A of the Income Tax Act, 1961 [in short "Act"].*
> *3. Ms Kavita Jha, who appears on behalf of the petitioner, says that insofar as the petitioner is concerned, it had filed its original return on 15.03.2022 concerning assessment Year (AY) 2021-2022.*
> *3.1 This return, Ms Jha says, was filed prior to the amalgamation scheme being sanctioned. We are informed that the amalgamation scheme was sanctioned/approved by the National Company Law Tribunal (NCLT) on 30.06.2022.*
> *4. It is Ms Jha's contention, that consequent to the amalgamation*

scheme being sanctioned/approved, 15 companies stand amalgamated with the petitioner.

5. Given this position, Ms Jha says that Section 170A of the Act, which was brought on to the statute on 01.04.2022, requires the petitioner to file a modified return in such form and manner as prescribed.

5.1 Furthermore, Ms Jha draws our attention to the third proviso of Section 153(1) of the Act. For the sake of convenience, the said provision is extracted hereafter:

> *"... Provided also that in respect of an order of assessment relating to the assessment year commencing on or after the 1st day of April, 2021, the provisions of this sub-section shall have effect, as if for the words "twenty-one months", the words "nine months" had been substituted. ..."*

5.2 Based on the said provision, Ms Jha says that the time limit for completing the assessment expires on 31.12.2022, although, the petitioner would have time to file the modified return in terms of Section 170A of the Act, as per the Central Board of Direct Taxes (CBDT) order dated 26.09.2022 [read with corrigendum dated 27.09.2022] issued under Section 119 of the Act till 31.03.2023.

6. Prima facie, according to us, if Section 170A of the Act, which is a non-obstante clause, obliges the successor, in the event of a business reorganization, to file a modified return in the form and manner prescribed, [qua which CBDT has granted time up until 31.03.2023], the assessing officer cannot proceed with the assessment, based on a pre-merger return filed by the petitioner.

7. Therefore, in order to avoid further complications, we are inclined to direct the assessing officer to stay his/her hands and not continue with the assessment proceedings till such point in time when the period for filing modified return in the prescribed form and manner reaches the end date i.e., 31.03.2023.

8. Since this matter involves interpretation of Section 170A of the Act, we would like Mr Zoheb Hossain, who appears on behalf of the respondents/revenue, to file a counter-affidavit and assist us in the matter and, perhaps, also request the CBDT to look into the difficulties that the assessees, who are similarly circumstanced, may face.

9. Accordingly, issue notice to the respondents/revenue.

9.1 Mr Zoheb Hossain accepts notice on behalf of the respondents/revenue.

10. Counter-affidavit will be filed within the next three weeks.

10.1 Rejoinder thereto, if any, be filed before the next date of hearing.

11. List the matter on 06.04.2023."

2. Ms Kavita Jha, learned counsel who appears on behalf of the

petitioner, informs us that a modified return was filed on 30.03.2023.

3. It is Ms Jha's contention that the modified return can now be subjected to assessment by the concerned Assessing officer (AO).

3.1 That this option is the correct course of action is sought to be supported by referring to paragraph 19 of the counter-affidavit filed on behalf of the respondents/revenue.

3.2 Mr Sanjeev Menon, learned standing counsel, who appears on behalf of the respondents/revenue, affirms this position.

4. For convenience, paragraph 19 of the counter-affidavit is extracted hereafter:

> *"19. That, thus, this Hon'ble Court, may remit the case for scrutiny assessment to the file of the assessing officer after excluding the period during which assessment was stayed, pursuant to the order of the Hon'ble High Court dated 22.12.2023. Further, it is submitted that an extension of sixty days may be granted in accordance with the first proviso to Explanation 1 of S. 153 for completing the scrutiny assessment under S. 143(3) of the Act for AY 2021-22."*

5. Having regard to the position taken by the respondents/revenue and given the fact that the modified return, as noticed above, has already been filed by the petitioner, we are inclined to dispose of the writ petition with the following directions:

(i) The AO will have liberty to carry out scrutiny assessment;

(ii) The time taken between the date when the proceedings were stayed and up until today will stand excluded;

(iii) In terms of the first proviso appended to Explanation 1 of Section 153 of the Income Tax Act, 1961 [in short, "Act"], the AO will have available to him 60 days for completion of assessment proceedings, which will commence from the date of receipt of a copy of the order passed today, and

(iv) The assessment proceedings will be carried out having regard to the modified return filed by the petitioner.

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

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

OCTOBER 19, 2023

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Click here to check corrigendum, if any