



W.P.Nos.1026, 1028, 1029 of 2025 & 39767, 39769, 39770 of 2024

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MOHAMMED SHAFFIQ, J.

Writ petition is filed challenging the proceeding dated 20.12.2024 rejecting the request for cross examination of Suresh Khatri and Rajendra Kothari.

2.The learned counsel for the petitioner would submit that the request for cross examination has been rejected by stating that the unaccounted cash is determined based on the analysis of the entries in the seized materials and not based on the statement of Suresh Khatri and Rajendra Kothari. The relevant portion of the impugned order is extracted hereunder:

“..... Besides this, unaccounted income is determined based on the analysis of the entries in the seized material and not based on the statements of these persons.. . . .”

2.1.However, after stating so, a show cause notice is issued by the



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respondent, wherein, reliance is placed on sworn statement of Rajendra Kothari, to identify the transactions in the ledger in the JPACK software as belonging to M/s.KLP Projects Pvt. Ltd., in which, the petitioners are partners. It is thus submitted that the impugned order rejecting the request for cross examination is unjustified.

3.It is the submission of the learned counsel for the respondent that any request for cross examination will have to be considered only on completion of the order of the adjudication and thus, the present writ petition challenging the denial of the opportunity to cross examine before completion of assessment is pre-mature.

4.The learned counsel for the respondent would also submit that this is the second round of litigation inasmuch as in the earlier round, specific grounds were raised on violation of principles of natural justice, *inter alia* in view of the failure to grant an opportunity to cross examine and the same was disposed of with a set of directions, however, there was no specific direction for an opportunity to cross examine.



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5.The learned counsel for the petitioner would submit that even the order of the learned single judge only required a de novo assessment being made and in any view, a writ appeal was filed challenging the above order of the learned judge, wherein, while granting an interim order, the Division Bench of this Court noticed that the issue of violation of principles of natural justice on the ground of failure to grant an opportunity to cross examine was also recorded, while also staying para 115 of the learned single judge's order, which contained a direction to the assessing officer to make the assessment by invoking Section 69 A. Thereafter, the Division Bench has proceeded to pass final orders. While it is the contention of the petitioner that de novo assessment would include their right to cross examine being preserved. However, the learned counsel for the respondent would submit that the issue of whether cross examination ought to be permitted or not stands resolved by the single judge order in the first round itself and thus this is merely a case of re-agitating an issue which already stands closed.



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6. On a reading of the the learned Single Judge's order, the interim order of the Division Bench as well as final order of the Division Bench, *prima facie* there is merit in the submission of the learned counsel for the petitioner inasmuch as both the learned single judge as well as the Division Bench only require the assessment to be made *de novo*. *De novo* would mean a afresh and thus all the rights would be preserved including the right to cross examine. Yet another reason why this Court is inclined to *prima facie* agree with the submission of the learned counsel for petitioner is in view of the fact that any opportunity to cross examine after adjudication as suggested by the learned standing counsel may not serve any purpose. In this regard it may be relevant to refer to the judgment of the Supreme Court in the case of ***Shaduli Yusuff 39 STC 478*** wherein, it has been stated that cross examination must be afforded prior to passing of the orders.

7. In view thereof, this Court is *prima facie* of the view that the impugned order rejecting the request of cross examination is unjustified, in any view requires further deliberation. Thus, there shall be an order of



interim stay.

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8.List the matter on 12.02.2025.

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