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

\+ W.P.(C) 3234/2024

EXPRESS FREIGHT RAILWAY CONSORTIUM ..... Petitioner

Through: Mr. Nageswar Rao, Ms. Viyushti Rawat and Mr. Aman Rewaria, Advocates

versus

ASSESSMENT UNIT INCOME-TAX DEPARTMENT AND OTHERS ..... Respondents

Through: Mr. Abhishek Maratha, Sr. SC.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

O R D E R

% **04.03.2024**

CM APPL 13360/2024 (Exemption)

1. Allowed subject to all just exceptions.
2. The application stands disposed of.

W.P.(C) 3234/2024 and CM APPL 13359/2024 (Stay)

1. This writ petition has been preferred seeking the following reliefs:-

> "a) issue writ in the nature of Certiorari or mandamus or any other appropriate writ, order or direction quashing impugned final assessment order dated 07.02.2024 issued under section 143(3) read with section 144B read with section 144C(3) of the Act along with demand notice dated 07.02.2024 issued under section 156 of the Act in relation to assessment year 2021-22 (**Annexure P-1**);
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> b) issue writ in the nature of Prohibition or any other appropriate writ, order or direction staying all further proceedings pursuant to / in consequence to **Annexure P-1** in relation to Assessment Year 2021-22;

c) for ad-interim relief in terms prayer (b) above; and

d) Such further and/or other orders be made and/or directions be given as would afford complete relief to the Petitioner."

2. The writ petitioner is essentially constrained to approach this Court since notwithstanding the admitted position that objections had been preferred before the Dispute Resolution Panel ["**DRP**"] and were pending, the impugned Final Assessment Order has come to be passed on 07 February 2024. It is in the aforesaid context that Mr. Rao, learned counsel for the petitioner, submits that bearing in mind the statutory scheme of Section 144C of the Act, the passing of the Final Assessment Order cannot sustain. Mr. Rao, also draws our attention to the judgment rendered by this Court in **Pepsico India Holdings Private Limited v. Assessment Unit Income Tax Department National Faceless Assessment Centre and Ors.** [2023 SCC OnLine Del 7661] to submit that the impugned Final Assessment Order is wholly illegal and is liable to be quashed at the outset itself. The relevant extracts of that decision are reproduced as under:-

> "**7.** Having heard learned counsel for the parties, this Court is of the view that the issue at hand is no longer *res integra* as it has been decided by the Bombay High Court in *Sulzer Pumps* (supra) wherein it has been held as under:—
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> > *"6. In our view since petitioner had already filed a reference raising his objections to the DRP and Section 144C (4) of the Act requires the Assessing Officer to pass the final order including the view expressed by the DRP, we will be justified in setting aside the order of the Assessing Officer dated 28th June, 2021 which is impugned in this petition. We would also observe that the Assessing Officer cannot be faulted for passing the impugned order. At the same time, the Assessing Officer will also have benefit of considering the views of DRP while passing a fresh Assessment Order."*

> **8.** This Court is in agreement with the view expressed by the Bombay High Court in the aforesaid decision. <u>Once the objections have been filed by the assessee against a draft assessment order within the time limit prescribed under Section 144C(2)(b), the rest of the procedure should be followed as prescribed and the final assessment order ought to be passed by the Assessing Officer in accordance with the directions issued by the DRP</u>.
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> **9.** This Court is further of the view that no prejudice will be caused to the Respondent-Department if the present petition is allowed and the impugned assessment order is set aside as Respondent-Department would be well within its rights to pass a fresh assessment order post the receipt of direction from the Respondent No. 3-DRP.
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> **10.** Accordingly the impugned assessment order dated 21st November, 2023, the computation sheet as well as all the subsequent notices are set aside and the writ petition is allowed."

3. Mr. Maratha, learned counsel appearing for the respondents, on instructions, on the other hand submits that the impugned order of assessment has evidently come to be framed and passed since it would appear from the record that although the Assessing Officer ["**AO**"] was intimated of the filing of the objections before the DRP, a copy of those objections were not provided to it. According to learned counsel, the statute itself mandates that copies of the objections be provided to both the DRP as well as the AO.

4. In our considered opinion once the AO concedes that it had been duly intimated of objections having been preferred to the DRP, it would have been well advised to either call for a copy of those objections or at least stay its hands till the matter was clarified.

5. Since the aforesaid facts and which has led to the institution of the present writ petition are not in dispute, we are of the concerned opinion that no useful purpose would be served in granting time to the respondents to file a reply or to retain this writ petition on our Board.

6. We consequently allow the instant writ petition and set aside the order dated 07 February 2024 impugned before us. The AO shall now proceed in the matter upon receipt of directions from the DRP.

7. The petition shall stand disposed of along with pending application.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MARCH 4, 2024
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