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

\+ W.P.(C) 3723/2024 & CM APPL 15329/2024 (stay)

MOTHER DAIRY FRUIT AND VEGETABLE PRIVATE LIMITED ..... Petitioner

Through: Mr. Ajay Vohra, Sr. Adv. with Mr. Vishal Kalra and Mr. S.S. Tomar, Advs.

versus

THE ASSESSMENT UNIT, NATIONAL FACELESS ASSESSMENT CENTRE, NEW DELHI & ORS. ..... Respondents

Through: Mr. Gaurav Gupta, Sr. Standing Counsel along with Mr. Shivendra Singh, Jr. Standing Counsel and Ms. Mahima Garg, Adv.

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

ORDER

% **13.03.2024**

1. The writ petitioner impugns the Show Cause Notice [‘**SCN**’] dated 06 March 2024 issued by the first respondent who appears to have taken the position that assessment proceedings for Assessment Year [‘**AY**’] 2022-23 would have to be continued notwithstanding the filing of an application by the petitioner on 24 July 2023 read with application dated 21 December 2018 and which is stated to be pending

before the Board for Advance Rulings ["**BFAR**"].

2. Undisputedly and in the admitted facts which obtained, it would be the statutory bar constructed in terms of Section 245RR of the Income Tax Act, 1961 ['**Act**'] which would apply and which reads as under:-

> "245-RR. Appellate authority not to proceed in certain cases.—No Income Tax authority or the Appellate Tribunal shall proceed to decide any issue in respect to which an application has been made by an applicant, being a resident, under sub-section (1) of Section 4079[245- Q]."

3. We further note that there is a statutory extension of time limit for passing an assessment order for the period an application is pending before the BFAR. This is manifest from Explanation 1 of Section 151 of the Act which reads as:

> "Explanation 1.— For the purposes of this section, in computing the period of limitation—
>
> xxxxx xxxxx xxxxx
>
> (viii) <u>the period commencing from the date on which an application is made before the [Authority for Advance Rulings or before the Board for Advance Rulings] under subsection (1) of Section 245-Q and ending with the date on which the order rejecting the application is received by the Principal Commissioner or Commissioner under sub-section (3) of Section 245-R;</u> or
>
> xxxx xxxxx xxxxx
>
> <u>shall be excluded</u>."

4. In that view of the matter, it is manifest that the Assessing Officer ['**AO**'] cannot possibly proceed with the assessment till such time as the application preferred by the petitioner before the BFAR is pending. The interest of the Revenue, in any event, stands secured in light of the Explanation noticed above.

5. In view of the aforesaid, we allow the instant writ petition and quash the impugned SCN dated 06 March 2024. We further restrain the AO from taking further steps subject to and awaiting the outcome of the application which has been made before the BFAR.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MARCH 13, 2024
RW