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

\+ ITA 248/2019, CM APPL. 12706/2019 (Stay)

PEE AAR SECURITIES LTD. .....Appellant

Through: Ms. Shreya Jain, Mr. Gaurav Tanwar, Advs.

versus

DEPUTY COMMISSIONER OF INCOME TAX-5 NEW DELHI .....Respondent

Through: Mr. Sanjay Kumar, SSC with Ms. Esha Kadian, Adv.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

O R D E R

% **24.07.2024**

1. This appeal is directed against the order of the **Income Tax Appellate Tribunal**[1] dated 23 August 2018 and in terms of which the Tribunal has come to dismiss the challenge which was raised by the appellant-assessee against the order of assessment.

2. It appears that during the pendency of the present appeal, the appellant appears to have raised an issue of the principles of natural justice having not been adhered to in the course of the assessment proceedings. This led to the Court calling upon the respondent to produce the relevant records. Despite the aforesaid direction having been issued as far back as on 25 April 2022, the respondents have been unable to produce the record for our perusal.

3. Although the appeal seeks to raise various questions with respect to a purported violation of natural justice, the procedure for sanction as contemplated under Section 151 of the **Income Tax Act,**

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[1] Tribunal

1961[2] having not been adhered to and others concerning the merits of the additions made, we take note of the following position on facts which emerges from the record.

4. During the course of assessment, the **Assessing Officer**[3] is stated to have addressed two communications dated 18 December 2012 and 08 February 2013 seeking information under various heads. According to the appellant, the aforesaid letters were duly attended to and compliance was effected on 15 January 2013. Pursuant to the letter of 08 February 2013, further information in respect of investments in shares are stated to have been provided on 19 February 2013 and 22 February 2013. It has, however, been contended that even before the aforesaid communications could be examined by the concerned AO, a demand notice dated 15 February 2013 came to be passed pursuant to an undated assessment order which came to be drawn. This was followed by a notice under Section 271(1)(c) dated 15 February 2013 proposing imposition of penalty under that provision.

5. These facts are duly disclosed in the filing which the appellant submitted before the **Commissioner of Income Tax (Appeals)**[4] and which had come to be recorded in its order dated 24 June 2014. The relevant extract of the aforesaid filing is reproduced hereinbelow: -

> "**C**. In response to two letters received from A.O. dated 18-12-2012 and 08-020-2013, the assessee had fully complied him the letters and provide all the information sought for by the A.O. However the A.O. declined to take cognisance of the information provided and instead completed the assessment virtually ex-party as will be obvious from the calendar of the events given below:
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> 1. Letter seeking address PAN No. Etc. dated 18-12-2012

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[2] Act
[3] AO
[4] CIT(A)

of the two finance companies

2. Date of Compliance dated 15-01-2013

3. Notice letter seeking production of Principle Officers of the two companies and further information of the share investments **dated 08-02-2013**

4. Date of compliance dated 19-02-2013/22-02-2013 (compliance could not be made on 18/02/2013 because of ongoing agitation in the Income Tax Department. The A.O was informed accordingly, and he agreed to grant time for submission of the information by 19/02/2013)

5. Date of preparation of Demand Notice and the compliance of assessment (order does not mention dated but order received on March 2nd 2013) **dated 15-02-2013**

6. Notice of penalty under section 271(I) (C) of the Income Tax Act is **dated 15/02/2013.**

From the above it will be very cleared that the A.O. had finalised the assessment without waiting for compliance by the assessee even within the time given by him to the assessee. He had also initiated penalty action under section 271 (i) (C) well before the date prescribed for compliance, i.e. on 15.02.2013. Further the A.O. has claimed in his order that he had obtained the report for the Income Tax Inspector who had failed to serve the notice to the Principal Officers of the Finance Companies (Para 2.4 of the assessment). It can be seen from the extract of the report relied upon by the A.O. that the nameless inspector report gives no reference to the date of inspection visit before finalizing his report of inability to serve the order. The A.O. failed to confront the assessee with the request which report gives room to the belief that the Inspector's is obviously fabricated and false."

6. As is manifest from the above, although the appellant had submitted all relevant documentation in terms of the notices aforementioned, the assessment order as well as the consequential notices of demand and penalty came to be framed prior to the expiry of the date proposed for compliance. The facts which were set forth in the filing of the appellant before the CIT(A) could not be disputed by the respondents.

7. We are thus of the considered view that the appeal would merit being allowed on this short ground alone, leaving it open to the appellant to establish any prejudice that may have been caused and additionally addressing submissions before the Tribunal insofar as the various additions are concerned.

8. We accordingly allow the present appeal and set aside the order of the Tribunal dated 23 August 2018. The appeal shall consequently stand revived on the board of the concerned Tribunal for decision afresh and in light of the observations appearing hereinabove.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

JULY 24, 2024/RW