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

\+ W.P.(C) 5616/2024 &CM APPL. 23191/2024 (direction)

DISH INFRA SERVICES PVT. LTD. THROUGH ITS AUTHORIZED REPRESENTATIVE .....Petitioner

Through: Mr. Vivek Sarin, Mr. Dibya Prashant Singh, Mr. Satish C. Kaushik, Advocates.

versus

ASSESSMENT UNIT NATIONAL FACELESS ASSESSMENT CENTRE, INCOME TAX DPEARTMENT .....Respondent

Through: Mr. Vipul Agrawal, Sr. Standing Counsel

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

O R D E R

% **02.09.2024**

1. The writ petitioner has approached this Court and invokes our jurisdiction under Article 226 of the Constitution, aggrieved by the final assessment order dated 28 March 2024 and the additions under the head of depreciation on **Consumer Premises Equipment**[1] which have come to be made in terms thereof.

2. For the purposes of disposal of the instant writ petition and which pertains to **Assessment Year**[2] 2022-23, we note that the petitioner had filed its Return of Income on 03 November 2022. An

[1] CPE
[2] AY

intimation under Section 143(1) of the **Income Tax Act, 1961**[3], came to be issued on 21 February 2023. This was followed by a notice under Section 142(1) on 16 August 2023 requiring the petitioner to furnish further details.

3. Insofar as the challenge raised in the present writ petition is concerned, we additionally take note of the discussion which ensued on 14 March 2024 in the course of assessment and where the writ petitioner was called upon to furnish additional details. This led to the issuance of a notice on 19 March 2024. Since that notice would have some bearing on the ultimate view that we take on the writ petition, the same is extracted hereinbelow:

> "Kindly refer to ongoing assessment proceedings in your case for the Assessment Year 2022-23.
>
> 2. The following variation(s) prejudicial to your interest are proposed to be made in your case:-
>
> <u>Please refer to the Video Conference (VC) held on 14.03.2024 in your scrutiny assessment case for the AY 2022-23.</u>
>
> <u>During the VC you were requested to furnish following data/ information</u>
>
> (1) Notes on your business activity with regard to installation and commissioning of Consumer Premises Equipment (CPE). Detail of contract / agreement between your company and consumer and the company for which you execute the work. Detail of invoice raised to the consumer and to the company for which you execute the work. You were also requested to submit a sample copy of invoice etc
>
> (2). You were requested to reconcile the amount of your import with the entries made in relation to the addition to capital assets.
>
> (3) You were requested to furnish detail of Capital Asset / Addition to Capital Asset / Detail of Depreciation and depreciation claimed on CPE
>
> In addition the above, you had been show-caused explain as to why depreciation claimed on CPE should not be disallowed.
>
> You had been requested to file the reply within 2 days (16.03.2024)

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[3] Act

and you accepted to file the reply within 2 days, but till 18.03.2024 no reply has been filed by you.

You are once again requested to file the detail as asked above by 22.03.2024, and You are once again show-caused to explain by 22.03.2024 as to why depreciation claimed on CPE should not be disallowed.

Please note that your case is getting barred by time-limitation on 31.03.2024 and considering the procedures involved in passing assessment orders, and also since enough opportunities of being heard has already been given to you, no more time shall be allowed to you after 22.03.2024 to file replies and Assessment Order shall be passed any time after 22.03.2024

You are hereby given an opportunity to show cause why proposed variation should not be made and the assessment should not be completed accordingly.

3. Kindly submit your response through your registered e-filing account at www.incometax.gov.in by 18:00 hours of 22/03/2024, whereby you may either:-

a. accept the proposed variation; or

b. file your written reply objecting to the proposed variation; or

c. If required, in addition to filing written reply you may request for personal hearing so as to make oral submissions or present your case. The request **can only be** made by clicking the Seek Video Conferencing button available against the SCN , in the view notices of this proceeding in the e-proceedings tab on efiling portal. The request can be made only before expiry of compliance date & time through video conference.

4. In case no response is received by the given time and date, the assessment shall be finalized taking into account the variation(s) stated above."

4. As is manifest from a reading of that notice, the **Assessing Officer**[4] took note of the information and material which was provided by the petitioner on 14 March 2024 and pertaining to its business activities with regard to installation and commissioning of CPE. It is the case of the respondents that pursuant to the discussion which ensued on 14 March 2024, the petitioner was asked to furnish data and information.

[4] AO

5. It is however alleged that since the petitioner failed to furnish that information by 16 March 2024, the respondents were constrained to issue the notice dated 19 March 2024.

6. While the petitioner disputes the suggestion of there being a failure to comply with directions communicated on 14 March 2024 suffice it to note that while responding to the notice in question, the petitioner submitted a detailed reply on 22 March 2024 which was taken on board by the AO.

7. Regard must also be had to the fact that the show cause notice of 19 March 2024 had merely called upon the writ petitioner to explain why depreciation as claimed on CPE should not be disallowed. That communication had not alluded to any quantification of the proposed variation or addition in the return of income.

8. Reverting then to the reply which was submitted by the writ petitioner on 22 March 2024, we take note of an express prayer made therein for being granted a personal hearing.

9. However, and as is manifest from the ultimate order made by the respondents in these proceedings, the request of the writ petitioner for a **Video Conference**[5] meeting was rejected. We deem it apposite to reproduce the same hereinbelow: -

> "**4.5 Point-wise rebuttal of reply of the assessed including analysis of any case law relied upon:** The SCN had been issued as the part of assessment procedure and issued within the provision of the Act. On the contrary to the accusation of the assessee that '*the Show Cause Notice dated 17.02.2024 issued by your office, Assessment Unit, ITD is an abuse of process and against the principles of natural justice*", the notice was issued under section 144B(1)(xii) which is mandatory on the part of the Assessment Unit before proposing any variation to the income. The notice was

[5] VC

> issued on 17.02.2024 requiring the assessee to file reply by 26.02.2024. Hence, it is clear that principles of natural justice was fully followed and show cause notice dated 17.02.2024 was not any abuse of process.
>
> During the VC held on 14.03.2024, the contention of the assessee was fully heard. Since no new information/explanation was asked in the additional SCN and a VC has already been held, the demand of another VC is nothing but a tactic of the assessee to delay the scrutiny proceedings and to make ready a future excuse for the appellate proceedings that natural justice was not provided to him. But it may be seen that sufficient natural justice was provided to the assessee. Considering the imminent time-barring date and also considering the fact that several procedures are to be followed to pass order in faceless assessment era, his request of new VC cannot be accepted as sufficient natural justice and time has already been provided to the assessee. The reply/information furnished by the assessee from time to time and during VC is taken into consideration. The reply furnished by the assessee against the additional SCN dated 19.03.2024 is also taken into the consideration before passing the order. "

Ultimately, the final order of assessment came to be passed on 28 March 2024.

10. It is in the aforesaid backdrop that Mr. Sarin, learned counsel appearing in support of the writ petition, draws our attention to the mandate of sub-clauses (vii) and (viii) of Section 144B(6) to contend that a failure to provide a personal hearing has rendered the impugned order invalid.

11. Apart from the above, it has been pointed out that the ultimate additions which came to be made and stand embodied in the final order of assessment dated 28 March 2024, while rejecting the claim for depreciation on CPE, the AO has observed as follows:

> "The assessee imports the CPE which is the consumable item of the assessee. The assessee installs the CPE at the premises of the consumers and receives a certain part of his expense from the consumers against the installation. The remaining part is billed to the parent company on whose direction the installation is done (as it has been discussed in Para A and B above in detail). To befool the Income Tax Department, the purchase made of CPE are shown under capital expense and CPE are added to the fixed assessee to

claim depreciation. To substantiate his claim, agreement is made with the consumer wherein it is said that the CPE will the property of the assessee company but on analysis of the business module, it appears that the main characteristics of lease/rent agreement are not included in the agreement.

In view of the above discussions, the Consumer Premises Equipment of the assessee which includes, set top box, dish antenna, LNB and cables (CPE) cannot be treated as the capital asset of the assessee and accordingly depreciation claimed of Rs 803,41,00,000/- (Rs 803.41 crore) on CPE during the year by the assessee is disallowed."

12. It was submitted that neither the show cause notice of 19 March 2024 nor for that matter any other notice had suggested additions of INR 803,41,00,000/- being made to the ROI which was submitted.

13. Since the infraction of an opportunity of personal hearing appears to be undisputed, we find ourselves unable to sustain the final order of assessment in so far as it proceeds to rule on the question of depreciation of CPE and the imposition of penalties pursuant thereto. We also bear in mind the fact that the notice of 19 March 2024 had nowhere suggested or communicated to the writ petitioner the intent of the respondents to doubt the characterization of a capital expense. We also bear in mind that the petitioner was not a non-filer. In fact the return was submitted as far back as in November 2022. This was, therefore, not a case where the petitioner had been found to have delayed an expeditious conclusion of the assessment proceedings.

14. Accordingly, and for all aforesaid reasons, we allow the instant writ petition and quash the impugned order dated 28 March 2024 insofar as it rules on the aspect of depreciation on CPE. The matter shall stand remitted to desk of the AO to be examined afresh and for further steps being taken as may be otherwise permissible in law. All

rights and contentions of respective parties on merits are kept open.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

SEPTEMBER 2, 2024/*ib*