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

+ **W.P.(C) 5769/2024**

DYNAMIC DRILLING AND SERVICES PRIVATE

LIMITED

.....Petitioner

Through: Mr. Ajay Vohra, Sr. Advocate,
Mr. Rohit Jain, Mr. Deepesh
Jain, Mr. Samarth Chaudhari,
Advocates.

versus

NATIONAL FACELESS ASSESSMENT CENTRE & ANR.

.....Respondent

Through: Mr. Sanjeev Menon, JSC.
Counsel with Mr. Indruj Singh
Rai, SSC

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

08.08.2024

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CM APPL.45419/2024 (57 Days Delay in Rej.)

This is an application filed by the petitioner seeking condonation of delay of 57 days in filing the rejoinder.

For the reasons stated in the application, the delay of 57 days in filing the rejoinder is condoned.

The application is disposed of.

W.P.(C) 5769/2024 & CM APPL. 23911/2024 (Stay)

1. The writ petitioner is aggrieved by the final order of assessment dated 27 March 2024 framed in terms of Section 143(3) read with Section 144B of the Income Tax Act [“Act”].

2. We are concerned with Assessment Year [“AY”] 2022-23 and



in respect of which, the petitioner submitted its Return of Income on 25 November 2022 declaring a total loss of INR 11,57,73,941/-. Once the processing of the aforesaid return was commenced vide an intimation under Section 143(1) of the Act, the carry forward loss of INR 11,57,73,941/- was reduced to INR 54,70,532/-. The aforesaid intimation was assailed by the petitioner before the Commissioner of Income Tax (Appeals). That appeal came to be disposed of on 27 December 2023 with a direction for the jurisdictional Assessing Officer [“AO”] to allow for the carry forward losses in terms of the return as submitted.

3. In the meanwhile, and on 01 June 2023, the petitioner submitted a revised Return of Income, which too was picked up for scrutiny. On 20 February 2024, a questionnaire was issued which principally dealt with the following two issues:

“7.Please furnish complete details with documentary evidences for claimed direct expenses for Rs.23,28,90,425/- which prove genuineness and creditworthiness of the claimed expenses.

XXXX

XXXX

XXXX

16. As per information available with the department the assessee company has made transaction [in code EXC-004] for bill of entry for import for assessable value exceeding Rs.20 lakh(custom import) for Rs.17,07,84,14,000/- during the year under consideration, please furnish complete details of the transaction with documentary evidence.”

4. The petitioner, in terms of its letter of 26 February 2024, while dealing with Query 16 denied any such transaction having been undertaken in the AY in question and accordingly, called upon the AO to provide requisite details with respect to the alleged import of INR 1707.84 crores.

5. The petitioner followed the aforesaid communication with



another letter dated 08 March 2024, and while responding to Query No.7, it took the following position:

“The Company is engaged in the Offshore drilling services therefore direct expenses consists of (a) Drilling operation expenses for Rs.21,70,76,488/-, which includes cost related to the Crew members such as travelling, training, medical, insurance, etc. Repair & maintenance with relation to the operation of the Offshore Rig, inspection/ survey charges, transportation charges of the Crew Members and surveyors, and other charges such as communication and other operating expenses etc.

(b) Catering Expenses for Rs.1,00,46,902 for providing meal to our Crew members since Rig is located at remote offshore location and catering sendees is provided by the contractor throughout the contract period, (c) Equipment rental expenses for Rs-57,67,035 which includes Rig sense and Gaswatch Equipment rental charges. Details of the expenses along with invoices on sample basis (Complete invoices will be voluminous) is attached as per Annexure 1.”

6. On 18 March 2024, however, the AO, without considering the submissions in the letter noticed above, issued a show cause notice proposing to make two variations on the basis of what the petitioner describes to be imaginary and non-existent figures.

7. It becomes relevant to note that the total additions which were proposed amounted to INR 1909.80 crores. The AO thereafter called upon the petitioner to furnish a response within 24 hours. Despite having been granted merely a day to respond to the aforesaid notice, the petitioner submitted a reply on 19 March 2024 whereafter the impugned assessment order under Section 143 of the Act came to be passed on 27 March 2024.

8. As we go through the impugned order of assessment, we find that there has been an evident failure to either notice or consider the various disclosures which were made by the petitioner and were contained in its letters of 08 and 19 March 2024. More importantly, we find that the AO had also failed to provide the requisite



information which formed the basis of Query No. 16. This, in our considered opinion, clearly amounted to a violation of the principles of natural justice.

9. We note that while dealing with an identical challenge, a Division Bench of our Court in **Bausch and Lomb India Private Limited Vs. Assessment Unit, National Faceless Assessment Centre, Delhi** [2024:DHC:3719-DB] had observed as follows:

“9. It is, thus, apparent that the Assessing Officer also had no knowledge as to which import or purchase made by the assessee was not disclosed by the assessee as the Assessing Officer also had no such information. We accept the contention that apart from stating that it had not imported goods of the value as disclosed, it was impossible for the assessee to dispute the alleged additional purchases. The assessee could not be faulted for not reconciling the data as the information available with the Assessing Officer is wholly insufficient for carrying out any reconciliation exercise. It is obvious that the reconciliation exercise can only be carried out if the details of invoices or Bills of Entry were available. Without such information, it would be impossible to identify the alleged purchases or imports that were subject matter of dispute. If any addition was proposed to be made on the basis that the purchases as reflected in the assessee’s books is not correct and it has made certain imports that had not been recorded in the books of accounts, the least that the Assessing Officer was required to do was to identify the entries that ought to have been made in the Books of Accounts of the assessee and which it had failed to do. Merely proceeding on the basis that CBIC is an apex body and therefore, information provided by it cannot be doubted, without even identifying or meaningfully analysing such information, is wholly insufficient to proceed to make an addition. If the relevant details of the alleged imports were not available with the Assessing Officer, and it was not possible to identify the expenditure made by the assessee, it was impermissible for the Assessing Officer to make an addition on account under Section 69C of the Act. Plainly, if the Assessing Officer could not identify the expenditure made, it could not make an addition on account of unexplained expenditure.

10. In view of the above, we find merit in the contention that the impugned order is unsustainable and has been passed in violations of principles of natural justice. It is obvious that the Assessing Officer must have some material to indicate that an expenditure has been made to make such an addition. The only material in this case are the cumulative amounts as mentioned by CBIC without details



of any such expenditure.”

10. Since the aforesaid position and an evident failure on the part of the Assessing Officer to provide the requisite material forming the basis for Query No.7 and 16 is not disputed or questioned by the respondents, we are of the opinion that the ends of justice would warrant the impugned order of assessment being quashed and the matter being remitted to the AO.

11. We, accordingly, allow the instant writ petition and quash the assessment order dated 27 March 2024. The matter shall, in consequence, stand remanded to the Assessing Officer for taking a decision afresh, and in accordance with law.

12. Needless to state we only observe that in case, any addition on account of unexplained expenditure is sought to be made, it would be incumbent upon the AO to provide all requisite material and information in its possession. All other rights and contentions of respective parties are left open.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

AUGUST 8, 2024/ib