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

+ **W.P.(C) 6141/2024 & CM APPL. 25555/2024 (Stay)**

**PASHUPATI ROAD CARRIER
PRIVATE LIMITED**

..... Petitioner

Through: **Ms. Prem Lata Bansal, Sr. Adv.
with Mr. Shivang Bansal & Mr.
Ram Avtar Bansal, Advs.**

versus

**ASSESSMENT UNIT INCOME TAX
DEPARTMENT**

..... Respondent

Through: **Mr. Ruchir Bhatia, SSC and
Mr. Anant Mann, JSC**

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

**HON'BLE MR. JUSTICE PURUSHAINDR KUMAR
KAURAV**

**ORDER
20.05.2024**

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

“a) to call for the assessment record relating to the assessee for AY 2022-23 maintained with NFAC,

b) to issue a writ of certiorari or any other writ, order or direction in the nature of certiorari quashing the impugned order-dated 22.03.2024 passed by Respondent u/s 143(3) r/w section 144B of the Act alongwith computation sheet, notice of demand issued u/s 156 and the notice issued u/s 27 4 r/w section 270A of the Income Tax Act, all dated 22.03.2024,

c) to prohibit the Department from recovering the demand raised in pursuance to such impugned assessment order and

d) to pass any other order or orders that may deem fit and proper in the facts and circumstances of the case.”



2. Although we had dismissed the writ petition on 02 May 2024, bearing in mind certain clarifications which were sought, the matter was placed for consideration again on 20 May 2024. It becomes pertinent to note that the challenge to the final assessment order passed under Section 143(3) of the Income Tax Act, 1961 [“Act”] read with Section 144B had been addressed on the ground that the petitioner had not been placed on notice of an intent of the Assessing Officer [“AO”] to reject the books of accounts and to make additions referable to Section 40(a)(ia) of the Act.

3. The petitioner had also asserted that the allegation of a failure on its part to comply with Section 194C(6) was also not one which was disclosed in any Show Cause Notice [“SCN”] issued prior to the passing of the final assessment order.

4. However, we find on the record a SCN dated 26 February 2024 and where the AO had observed as follows:

“During the assessment proceeding, Return of income filed by the assessee, audit report P&L account and Balance Sheet were examined. On perusal of audited profit & loss account, it has been found that the assessee has shown total revenue from operation amounting to Rs. 1,16,45,11,836 /- and shown direct expenses i.e. carried inward of Rs. 1,07,59,12,606 /-& other expenses. Further, on perusal of Break-up of total expenditure of entities registered or not registered under the GST as mentioned in 3CD of the Audit Report for the year under consideration. It was found that the total amount of Rs. 1,09,94,13,227/- and Rs. 5,93,745/- have been shown as expenditure relating to entities not registered under GST. It is also found from the 3CD of audit report that the assessee has deducted TDS under section 194C of the Act on the payment made only on Rs.38,62,809 to registered entity under GST. In this regard, a request was made to submit the details of Direct expense (carried inward expenses) i.e. Name, PAN and address of the entity to whom payment was made along with amount & method of payment with copy of ledger through notices issued u/s 142(1) of the I.T.A.T. But the assessee has not furnished any detail/documents till date in support of its claim like a declaration to that effect along with his Permanent Account Number, to the



person paying or crediting such sum. In absence of the detail/documents as required vide notices issued u/s 142(1) of the I.T.Act, correctness or completeness of the accounts of the assessee is in question.

As per the section 145(3) of the Income Tax Act-

“Where the Assessing Officer is not satisfied about the correctness of completeness of the accounts of the assessee, or where the method of accounting provided in sub-section (1) has not been regularly followed by the assessee, or income has not been computed in accordance with standards notified under sub-section, the assessing Officer may make a assessment in the manner provided in section 144.”

Since, expenditure claimed by the assessee is not verifiable in absence of documents documentary evidences Therefore, there is no other option but to complete the assessment on the basis of material available on record. Accordingly, the income of the assessee is proposed to assess @ 12% on total disclosed revenue from operation i.e. Rs. 13,97,41,420/- after rejecting the books of account invoking the provisions of 145(3) of the Act.

Therefore, in view of the above discussion, The assessee is requested to show cause as to why assessment should not be made at total income of Rs. 13,97,41,420/-.

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

5. As is evident from the aforesaid extract of the SCN, the AO had in clear and unequivocal terms placed the petitioner-assessee on notice with respect to the doubts harboured by it relating to the correctness and completeness of the accounts of the assessee. The AO had further observed that since the expenditure claimed is not verifiable, income was proposed to be assessed at 12% of the total disclosed revenue after rejecting the books of accounts. The submission, therefore, that the petitioner had not been apprised of the proposed rejection of books and variation in income would clearly not sustain.



6. Insofar as the disallowance under Section 40(a)(ia) is concerned, we deem it apposite to extract the following recitals as appearing in the final assessment order which came to be passed:

“3.5 Reply of the assessee to Show Cause Notice

In response to the Show Cause Notice, the assessee furnished its reply along with details of direct expenses, Lorry hire charges (non TDS), Breakup of payment to Regd and Unregistered entity under GST, copy of bank statements. The assessee further submitted that the payment to Non GST entities is mainly to person supplying to truck to company and on which either provision of GST is not applicable. However, the assessee has not furnished method of payment and copy of ledger of confirmation. The assessee has made huge payment to Non GST entities and the assessee has not submitted the method of payment i.e. either cash or banking channel. The assessee has also not furnished copy of ledger of confirmation and also did not furnish any bill & voucher on sample basis. The assessee only furnished the name, PAN, Lorry No., amount and date only. However, the assessee has not furnished documentary evidences in support of expenses. Since, the assessee has shown direct expenses i.e. carried inward of Rs. 1,07,59,12,606/- & other expenses which is 92% of the total revenue from operation and the total amount of Rs. 1,09,94,13,227/- and Rs. 5,93,745/- have been shown as expenditure relating to entities not registered under GST for which only details have been submitted. In these circumstances, expenses incurred by the assessee is not verifiable. In view of the above discussion, it cannot be accepted that the expenses shown by the company to entities is genuine or reliable. In view of the above books of account is also not reliable. Accordingly, income of the assessee is assessed at total income of Rs 13,97,41,420/- (i.e. 12% of total revenue from operation) after rejecting the books of account u/s 145(3) of the Income Tax Act. Penalty proceeding u/s 270A of the Income Tax Act is also initiated for under reporting of income. Further, the assessee is also liable for disallowance u/s 40(a)(ia) for non fulfilment of condition prescribed in section 194C of sub section (6) of the I.T. Act as assessee has not provided requisite declaration in prescribed format. However, as the books of account is not reliable and are rejected u/s 145(3) of the Income Tax Act. Therefore, no specific dis-allowance has been considered u/s 40(a)(ia) of the I.T. Act. In the event, the books of account are held to be reliable in any appellate proceedings, if any, then the specific disallowance u/s 40(a)(ia) for non deduction of TDS amounting to Rs. 26,40,95,684/- i.e. (30% of 88,03,18,945/-) Shall be required to be made.”



7. It is thus manifest from the aforesaid that no specific disallowance under Section 40(a)(ia) has been made nor have any additions consequentially factored in. All that the AO has observed is that the disallowance is not being made at this stage subject to the view that any appellate authority may take with respect to rejection of books of accounts. In view of the aforesaid, we find no merits in the challenge which stands raised.

8. The writ petition fails and shall stand dismissed. This order, however, shall be without prejudice to the rights and contentions of the writ petitioner which shall be open to be addressed in appropriate proceedings.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MAY 20, 2024/kk