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

\+ W.P.(C) 8640/2023

ARGOS HOLDINGS PTE LTD. ..... Petitioner

Through: Mr.Sanjay Sanghvi, Mr.Prabal Mehrotra and Mr.Shubhankar, Advs.

Versus

DISPUTE RESOLUTION PANEL-1 & ORS. ..... Respondents

Through: Mr.Aseem Chawla, Sr.SC with Ms.Pratishtha Chaudhary and Mr.Naveen Rohila, Advs for Revenue.
Mr.Kunal Rawat and Ms.Dolly Verma, Advs for R-3.

\+ W.P.(C) 8641/2023

ARGOS HOLDINGS PTE LTD ..... Petitioner

Through: Mr.Sanjay Sanghvi, Mr.Prabal Mehrotra and Mr.Shubhankar, Advs.

Versus

DISPUTE RESOLUTION PANEL 1 & ORS. ..... Respondents

Through: Mr.Aseem Chawla, Sr.SC with Ms.Pratishtha Chaudhary and Mr.Naveen Rohila, Advs for Revenue.
Mr.Kunal Rawat and Ms.Dolly Verma, Advs for R-3.

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

O R D E R

% **13.03.2024**

1. Mr. Chawla, learned counsel representing the respondents states

that the counter affidavit which has been filed in W.P.(C) 8641/2023 is chosen to be adopted in W.P.(C) 8640/2023.

2. These two writ petitions have been preferred seeking the following reliefs:-

> "a) Issue a Writ of Certiorari or a writ in the nature of Certiorari or any other appropriate writ, order, or direction under Article 226 and/or 227 of the Constitution of India quashing / setting aside the impugned DRP Order dated 11 May 2023 issued by Respondent No. 1.
> b) Issue a writ of mandamus or a writ in the nature of mandamus or any other writ, order or direction directing the Respondents, their officers and employees to cease and desist from implementing any further provisions of the IT Act.
> c) Issue a writ of mandamus or a writ in the nature of mandamus or any other writ, order or direction quashing the DRP Order dated 11 May 2023 issued by Respondent No. 1 and direct Respondent No. 1 to properly consider and adjudicate / decide the objections dated 22 September 2022 (filed by the Petitioner) objecting variations proposed in the Draft Assessment Order and passing a speaking order based on facts and material on record and not to delegate the same to the Respondent No. 2.
> d) Pass an order directing the Respondents to treat the Petitioner as an 'FPI' for the purpose of the IT Act and consequential relief.
> e) Pass an order directing the Respondents to stay all the actions under the IT Act in relation to ongoing reassessment proceedings until the hearing and final disposal of the present petition.
> f) Any other order which this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."

3. The challenge stands succinctly noticed in our order of 30 June 2023 which is reproduced herein below:-

> **1.** This is a petition under Article 226 of the Constitution of India assailing order dated 11 May 2023 passed by the Dispute Resolution Panel (DRP) constituted by the Income Tax Department under Section144C (5) of the Income Tax Act, 1961.
>
> **2.** The impugned order purports to deal with the representation made by the petitioner against a draft assessment order dated 26.08.2022, passed by the Assessing Officer (AO) for the Assessment Year 2015-16.
>
> **3.** A reading of the impugned order reveals that the two grounds were raised by the petitioner to assail the order of the AO.

The impugned order deals with these two grounds, thus:-

> "**4.1.1** **In ground number 1**, the assessee has assailed the Draft Assessment Order passed by the AO dated **26.08.2022** on the grounds that the order is time barred, the reassessment proceedings has been initiated on an already wound up company and that the DAO was passed without providing adequate opportunity of hearing to the assessee. In this connection, it is submitted that once a company is dissolved it becomes a non existent party and therefore no action can be brought in its name. It is further submitted that the notice u/s **148** was issued on **27.03.2021** whereas the order passed on **26.08.2022** which is beyond the time limited permitted u/s **153** of the Act. The panel note that the company was still in existence at the time of issue of notice under section 148 of the Act. Pursuant to the issue of notice u/s **148** several notices were issued by the AO requiring the assessee to furnish necessary details and to substantiate it claim. As noted by the AO, on many occasions the assessee neither filed any reply to the notice nor sought any adjournment. However the AO did issue a final SCN providing the assessee an opportunity to substantiate its claim. Response of the assessee was duly considered by the AO before she came to her conclusion. Thus, the allegation of the assessee that no opportunity was provided during assessment proceedings does not stand substantiated by the facts on record. As regards the assessee's contention that the order of the AO is barred by time under the provisions of section 153 of the Act, the AO is directed to take the argument of the assessee into consideration and pass a speaking order in this regard. **Ground number 1 is accordingly disposed of.**
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> 4.2.4 The same was forwarded to the AO vide letter dated 13.02.2023 for examination and sending a remand report after giving sufficient opportunity to the assesse and obtaining comments on the same. Since, the matter involves limitation, reminders were issue d to the AO vide this office letters dated 21.02.2023, 13.03.2023, 06.04.2023 and 27.04.2023. However, the remand report of the AO is still awaited. In the interest of natural justice, the panel considers it appropriate to take the additional evidence filed by the assessee on record. The panel also direct the AO to take the submission of the assessse along with the additional evidence filed vide letter dated 22.09.2022 into consideration and pass a speaking order in this regard . **Ground number 2 along with the sub-grounds** are accordingly disposed of."

(Emphasis supplied)

4. Apart from these two paragraphs, the impugned order merely reproduces the statutory provisions and the contentions advanced by the petitioner.

5. Mr. Sanjay Sanghvi, learned counsel for the petitioner submits that by the impugned order, learned DRP has effectively abdicated the functions vested in it by Section 144C(8) 1 of the Income Tax Act, 1961. As against this, Mr Aseem Chawla, learned Senior Standing Counsel for the respondent submits that Section 144C(8) of the Income Tax Act, 1961 has to be read with Section 144C(5)2 . Thus read, the impugned order cannot be said to be infirm in any manner. He submits that ultimately the exercise of assessment has to be carried out by the AO and not by the DRP and that, therefore, the DRP could not have finalized any assessment return of the petitioner.

6. Having heard learned counsel and perused the statutory provisions, even if one were to accept the submissions of Mr Chawla, a reading of the impugned order reveals that the DRP has merely passed the buck on to the AO, after noting the submissions made by the petitioner. There is no reflection of any application of mind, whatsoever, by the DRP, to any of the submissions of the petitioner. Even under Section 144C(5) of the Income Tax Act, 1961, the DRP is required to issue directions to guide the AO in passing the assessment order. No such directions are forthcoming in the impugned order.

7. All that the DRP has done is to note the submissions of the petitioner and direct the AO to take them into consideration and complete the assessment.

8. We had queried to the learned counsel for the petitioner as to whether the order would be set aside and the matter remanded to the DRP for de novo consideration in accordance with Section 144C of the Income Tax Act, 1961. He has merely attempted to obtain instructions but submits that his client is not in a position to instruct him to that effect.

9. In view thereof, issue notice to show cause as to why rule nisi be not issued.

10. Mr. Aseem Chawla, Sr. Standing counsel accepts notice on behalf of respondent Nos.1 and 2. Mr. Kunal Rawat, Advocate accepts notice on behalf of respondent No.3.

11. Let counter affidavit be filed within four weeks with advance copy to learned counsel for the petitioner, who may file rejoinder, if any, within four weeks thereafter.

12. List before the Roster Bench on 4 September, 2023.

13. Till the next date of hearing, the operation of the impugned order dated 11 May 2023 passed by the DRP, which directs the assessment order to be passed in respect of the Assessment Year 2015- 16, shall remain stayed."

4. As is ex facie evident from a reading of the order passed by the Dispute Resolution Panel ["**DRP**"] and is impugned herein, it is bereft of any reasoning and thus, fails to establish due application of mind.

5. In view of the aforesaid and on this limited ground, we allow the instant writ petition and set aside the impugned order dated 11 May 2023. The matter shall in consequence stand remanded to the DRP which shall proceed in the matter afresh, bearing in mind the observations made hereinabove.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MARCH 13, 2024/MJ