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

\+ W.P.(C) 9416/2024

MR VIPAN SAINI .....Petitioner

Through: Mr. A.P. Singh, Mr. Vijay M. Chauhan and Mr. Shyam Kumar, Advocates.

versus

OFFICE OF THE ASSISTANT COMMISSIONER OF INCOME TAX ACIT/DCIT CEN CIR, PTL. GOVERNMENT OF INDIA MINISTRY OF FINANCE INCOME TAX DEPARTMENT & ORS. .....Respondents

Through: Mr. Anurag Ojha, Sr. SC with Mr. V K Saksena and Ms. Hamlata Anand, Standing Counsels.
Mr. Arun Aggarwal, Mr. Shivam Saini and Mr. Pragul Rawat, Advocates for R-3.

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

O R D E R

% **11.07.2024**

CM APPL. 38632/2024 (Ex.)

Allowed, subject to all just exceptions.

This application stands disposed of.

W.P.(C) 9416/2024 & CM APPL. 38631/2024 (interim stay)

1. The writ petitioner assails the validity of the impugned notices dated 14 June 2024 issued under Section 226(3) of the Income Tax Act, 1961 [‘**Act**’].

2. It is the case of the writ petitioner that he was a Director in

Ekom Exim Private Limited and from which office he ultimately resigned on 04 May 2018. It appears that the aforenoted company owed dues to the Income Tax Department [‘**Department**’] and those liabilities have not been liquidated till date.

3. It is this which had constrained the respondent no. 1 to issue notice to the writ petitioner dated 24 November 2023. According to the writ petitioner, it could not respond to the notice dated 24 November 2023 since the same, for some inexplicable reason, went to the spam folder of his e-mail account. It is only thereafter that the impugned notices came to be issued.

4. Admittedly, the demands outstanding against the aforenoted company pertain to Assessment Year [‘**AY**’] 2016-17 and at which time the petitioner was admittedly a Director. It is in the aforesaid backdrop that we find that it would be incumbent upon the petitioner to prove and establish that the non-recovery of the dues payable to the Department cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

5. In view of the above and in our considered opinion, the ends of justice would merit the petitioner being accorded an opportunity to approach the first respondent and make a representation if he seeks to place its case within the exclusionary ambit of Section 179 of the Act and be able to establish that non-payment is not attributable to any act of gross neglect, misfeasance or breach of duty on his part.

6. We accordingly dispose of this writ petition according liberty as aforesaid. In case any such representation is made within a period of two weeks from today, the same may be duly examined and disposed of by the first respondent within a period of three weeks therefrom. The first respondent shall also afford an opportunity of hearing to the

writ petitioner.

7. All rights and contentions of respective parties are kept open.

8. Dasti.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

JULY 11, 2024/*vp*