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

\+ W.P.(C) 10124/2024

IBJL AIRCRAFT LOTUS CO LIMITED .....Petitioner

Through: Dr. Shaswat Bajpai, Mr. Mahir Khanna & Mr. Sharansh Bhardwaj, Advs.

versus

ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE INT TAX 2 (1) (1) & ANR. .....Respondents

Through: Mr. Ruchir Bhatia, SSC with Mr. Anant Mann, Mr. Pratyaksh Gupta, JSCs. Ms. Aditi Sabharwal, Mr. Digvijay Singh Rawat, Mr. Vinod Jain, Mr. Pawan Gaur & Mr. Parikshit Gaur, Advs.

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

O R D E R

% **24.07.2024**

CM APPL. 41435/2024 (Exemption)

Allowed, subject to all just exceptions.

This application stands disposed of.

W.P.(C) 10124/2024 & CM APPL. 41434/2024 (Stay)

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

> "(a) Issue a writ in the nature of Certiorari to quash and set aside the impugned Final Assessment Order dated 29.05.2024 passed under section 143(3) read with section 144C(3) of the Act and notice dated 29.05.2024 issued under section 156 and all proceedings thereto in the case of the Petitioner disregarding the mandate provided under Section 144C and in contravention of the law.

(b) Issue a writ in the nature of Prohibition to restrain the Respondent from giving effect to/proceeding further pursuant to the impugned Final Assessment Order dated 29.05.2024 passed under section 143(3) read with section 144C(3) of the Act and the operation of the impugned assessment, demand notice and penalty notice be stayed.

(c) Issue any other Writ, order or Direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

(d) To grant costs in favour of the petitioner and against the Respondent."

2. The petitioner is essentially aggrieved by the passing of a final assessment order dated 29 May 2024 during the pendency of objections which had been preferred before the **Dispute Resolution Panel**[1].

3. We note that while dealing with an identical controversy, we had in **SDL Multi-lingual Solutions (Singapore) Pte Ltd. v. The Assistant Commissioner of Income Tax, Circle Int Tax 3(1)(2), Delhi & Anr.**[2] disposed of that writ petition in the following terms:

"**2.** It appears that in the course of undertaking assessment in accordance with the procedure as prescribed under Section 144C of the Income Tax Act, 1961 ['**Act**'], the petitioner had, assailing the draft assessment order filed its objections before the Dispute Resolution Panel ['**DRP**'] on 26 April 2024. However, a copy of the same, does not appear to have been independently served upon the Assessing Officer ['**AO**']. It is this, which perhaps led the AO to assume that since no objections were pending before the DRP, no fetter operated upon him to frame a final assessment order.

3. We note that while dealing with an identical situation, this Court in **Fiberhome India (P.) Ltd. vs. National E-Assessment Centre, Additional/ Joint/ Deputy/ Assistant Commissioner of Income-tax/Income-Tax Officer** [2021 SCC OnLine Del 5461] had observed that, in view of the scheme of Section 144C of the Act, the AO is bound by every direction issued by the DRP and duly set aside the impugned final assessment order directing the AO to act in accordance with the procedure stipulated in Section 144C of the Act. Since and admittedly the objections had been duly

[1] DRP
[2] [W.P.(C) 9469/2024]

> filed before the DRP in accordance with the statutory procedure prescribed by Section 144C, an inadvertent failure to furnish a copy of the same to the AO independently should not be viewed as fatal.
>
> **4.** In view of the aforesaid and since undisputedly, the objections before the DRP are still pending, we find ourselves unable to sustain the impugned final assessment order.
>
> **5.** The writ petition is accordingly allowed and the final assessment order, demand notice and the penalty notice each dated 22 May 2024 stand quashed. The matter shall now be taken up for consideration by the DRP and final assessment shall await the disposal of objections by the DRP.
>
> **6.** All rights and contentions of respective parties on merits are kept reserved."

4. The factual position which prevails here is identical. Undisputedly, the final assessment order has come to be framed notwithstanding the pendency of objections before the DRP. While there may have been an apparent failure to file a copy of those objections before the Assessing Officer, the same would, in our considered opinion, not be liable to be viewed as fatal or a justifiable ground to short circuit the procedure of assessment as contemplated under Section 144C.

5. Accordingly, and following the aforesaid decision and the reasons assigned hereinabove, we allow the instant writ petition and quash the final assessment order dated 29 May 2024.

6. The Assessing Officer shall await the disposal of the objections by the DRP. All rights and contentions of respective parties are kept open.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

JULY 24, 2024/kk