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

\+ W.P.(C) 10673/2024

IKEA INDIA PRIVATE LIMITED .....Petitioner

Through: Dr. Shashwat Bajpai and Mr. Mahir Khanna, Advs.

versus

ASSESSMENT UNIT NATIONAL FACELESS ASSESSMENT CENTRE INCOME TAX DEPARTMENT & ORS. .....Respondents

Through: Sh. Anurag Ojha, SSC & Ms. Hemlata Rawat, Jr. SC & Mr. V.K. Saksena, Advocate

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

O R D E R

% **02.08.2024**

CM APPL. 43908/2024 (Exemption)

Allowed, subject to all just exception.

This application stands disposed of.

W.P.(C) 10673/2024 & CM APPL. 43907/2024 (Stay)

1. This writ petition impugns the final assessment order dated 30 September 2023 as well as the directions dated 31 May 2024 framed by the **Dispute Resolution Panel**[1]**.** The petitioner is aggrieved by the finalisation of the assessment in light of the **Assessing Officer**[2] having proceeded to frame a final order on 30 September 2023 despite the pendency of objections before the DRP at the relevant time. It is in the aforesaid backdrop that Dr. Bajpai, learned counsel for the petitioner, contended that the respondents have acted in flagrant violation of the procedure for assessment as envisaged under Section 144C of the **Income Tax Act, 1961**[3]**.**

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[1] DRP
[2] AO
[3] Act

2. The dispute pertains to **Assessment Year**[4] 2020-21 and in respect of which the petitioner is stated to have filed its Return of Income on 01 February 2021. The return is stated to have been picked up for scrutiny assessment and which led to the issuance of a notice under Section 143(2) on 29 June 2021.

3. On 30 August 2023, the **Faceless Assessing Officer**[5] drew up a draft order suggesting various additions. Aggrieved by the aforesaid, the petitioner proceeded to file objections before the DRP on 29 September 2023. It is the case of the writ petitioner that the **Jurisdictional Assessing Officer**[6] was duly apprised of the filing of objections before the DRP. According to them, notwithstanding the above, the FAO proceeded to pass a final assessment order on 30 September 2023.

4. When the DRP was apprised of the aforesaid, it is stated to have called for a remand report from the JAO and which was submitted on 26 April 2024. The said email communication which stands placed as Annexure-P5 before us, acknowledges the receipt of a copy of the objections which were filed by the petitioner before the DRP on 29 September 2023.

5. However, and notwithstanding the above, the objections preferred by the petitioner before the DRP have come to be dismissed with the following observations: -

> "6. The matter has been considered. It is evident from the submission of the assessee filed on 29-09-2023 that the draft order in this case was passed on 30-08-2023 against which the assessee filed his objection on 26-09-2023 within 30 days time. However, AO completed the assessment on 30-09-2023.

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[4] AY
[5] FAO
[6] JAO

7.This Panel sought a factual verification report from the AO. The ACIT, Circle-10(1), New Delhi has informed through email on 01.05.2024 as under:

" .... In this regard the requisite information is submitted as under:-

(a) No intimation has been received in this office about filing of objection before the DRP.

(b) Final Assessment order has been passed by the Faceless Assessing officer(Copy enclosed)."

8. The case-laws on Writ-Petition Orders by different Hon'ble High Court's on similar facts have been duly considered. The circumstances of these· cases are markedly different. ln most of these cases, the concerned assessees' had sought intervention of the Hon'ble Court as soon as impugned assessments were passed by the AO& therefore, in many of these cases, the demand notice had also not come into effect(as 30 days period had not lapsed from the dt. of service assessment order) & Hon'ble Court's were pleased to give appropriate directions to the DRP while holding the original assessment order as null and void. In the present case, assessee has not sought any such intervention from the Hon'ble High Court. Hence, any decision by this Panel would lead to creation of two assessments which might prejudice the Department adversely.

9.1t is ascertained that assessee has filed an appeal before the Commissioner(Appeals) against assessment order dated 30th September, 2023. There has been a lapse on part of the assessee in filing copy of the objection filed before the DRP with the AO in terms of mandatory requirement of Section 144C(2)(ii). Under these circumstances, AO completed the assessment on the basis of the draft order in terms of Section 144C(3) of the Act. The Panel acknowledges that filing of objection before the DRP, pre-assessment, or filing of regular appeal before the Commissioner (Appeal), post-assessment, are two alternative mechanisms available to an aggrieved taxpayer. Hence, as the assessee has exercised the alternative mode of remedy, in interest of substantive justice, the Panel hereby holds that the objection filed before it has become infructuous. The same is, accordingly, **DISMISSED**."

6. As would be evident from the above, it would appear that the DRP had called for a factual verification report from the JAO. The said authority is stated to have apprised the panel that no intimation had been received in its office with respect to the petitioner having

furnished objections before the DRP. The aforesaid clearly raises an issue of conflict especially when the same is viewed alongside the email which stands placed before us.

7. Notwithstanding the above, in our considered opinion, once it had been found on fact that objections had been duly preferred before the DRP, no final assessment order could have been framed. We note in this regard that while dealing with a similar controversy, we had in **SDL Multi-lingual Solutions (Singapore) Pte. Ltd vs. Assistant Commissioner of Income Tax, Circle Int Tax 3(1)(2), Delhi & Anr.**[7], held that an inadvertent failure to simultaneously furnish a copy of the objections to the AO should not be viewed as fatal or justify a final order of assessment being framed in the face of objections that may be pending before the Panel.

8. This aspect was duly highlighted by us, as would be evident from the following passages of that decision:-

> "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.
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> 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 filed before the DRP in accordance with the statutory procedure prescribed by

[7] W.P(C) 9469/2024

> Section 144C, an inadvertent failure to furnish a copy of the same to the AO independently should not be viewed as fatal.
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> 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."

9. Similarly, we had following *SDL Multi-lingual,* reiterated the aforesaid position in **IBJL Aircraft Lotus Co Limted vs. Assistant Commissioner of Income Tax, Circle Int Tax 2(1)(1) & Anr.**[8], as would be evident from the following conclusions that were rendered therein: -

> "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. disposed of that writ petition in the following terms:
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> "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.
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> 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 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.
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> 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.

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[8] W.P.(C) 10124/2024

> 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.
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> 6. All rights and contentions of respective parties on merits are kept reserved."
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> 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."

10. We note that the DRP has proceeded to reject the objections merely on the score that a final assessment order has been passed, rather than examining the objections on merits. The DRP also appears to have been influenced by the fact that in the interregnum and assailing the final order of assessment, the petitioner had also moved the **Commissioner of Income Tax (Appeals)**[9] by way of a statutory appeal.

11. However, and in our considered opinion, in light of the disclosures made by the respondents themselves and as would be evident from the email of 26 April 2024 coupled with the fact that undisputedly the objections had been preferred within the time prescribed, in our considered opinion, the end of justice would warrant the objections being revived for the consideration of the DRP afresh and in accordance with law.

12. We also take on board the statement made by Dr. Bajpai, who submitted that although the petitioner was constrained to immediately file an appeal before the CIT(A) bearing in mind the limitation

prescribed under the Act, the same is undertaken to be withdrawn forthwith.

13. We accordingly allow the instant writ petition and quash the impugned final assessment order dated 30 September 2023 as well as the direction of the DRP dated 31 May 2024. The objections preferred by the petitioner shall consequently stand revived on the board of the DRP and may be now disposed of in accordance with law. All rights and contentions of respective parties on merits are kept open.

YASHWANT VARMA, J

RAVINDER DUDEJA, J

AUGUST 02, 2024/neha

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[9] CIT(A)