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* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ **W.P.(C) 13242/2019**

M/S KUEHNE NAGEL PVT. LTD. ..... Petitioner

Through: Ms. Ananya Kapoor, Mr. Sumit Lalchandani and Mr. Tarun Chanana, Advs.

Versus

ADDL. COMMISSIONER OF INCOME-TAX, & ANR. ..... Respondents

Through: Mr. Gaurav Gupta, Sr. Standing Counsel with Mr. Shivendra Singh, Jr. Standing Counsel.

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

**O R D E R**

**% 15.02.2024**

1. The record would reflect that the writ petitioner had initially questioned the Notice dated 31 January 2019 issued under Section 148 of the Income Tax Act, 1961 [“**Act**”] by the respondents. When we had initially entertained the petition, interim orders had been passed in favour of the writ petitioner.

2. However, and during the pendency of the present petition, an Assessment Order is stated to have been passed on 13 December 2019. As our order of 24 January 2020 would itself reflect, the petitioner had at that stage sought liberty to prefer an appeal insofar as the Assessment Order dated 13 December 2019 is concerned. We are

informed by Ms. Kapoor that pursuant to the order of this Court on 24 January 2020, an appeal has in fact been filed and is pending.

3. The order of 24 January 2020 additionally appears to have taken note of the initiation of penalty proceedings pursuant to the assessment which was framed for the concerned Assessment Year.

4. It was in the aforesaid backdrop that the Court had taken note of the contention of the petitioner that the balance amount had already been offered for tax in the subsequent year and thus, there was no occasion for the initiation of penalty action. This is evident from the following recitals as appearing in our order of 24 January 2020, which are reproduced herein below:-

> **"C.M. No. 3006/2020**
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> Issue notice. Mr. Sharma accepts notice.
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> By this application, the petitioner seeks a direction to the respondents not to give effect to the assessment order dated 13.12.2019, including by raising any demand for recovering any amount from the petitioner. The petitioner also seeks liberty to prefer an appeal under Section 246A of the Income Tax Act against the re-assessment order dated 13.12.2019.
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> Learned counsel for the petitioner submits that the assessment order - though dated 13.12.2019, was given to the petitioner only on 27.12.2019. He states, on instructions, that the said order has not yet been uploaded on the system. This Court had stayed the passing of fresh re-assessment order on 16.12.2019. Learned counsel submits that the possibility of an ante-dated order being passed, cannot be ruled out. He further points that the Assessing Officer has accepted three out of four submissions of the petitioner. He has sought to make addition of Rs. 58,33,011/-, which amount has been offered to tax in the following Assessment Year, i.e., 2016-17.
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> Learned counsel for the petitioner has drawn our attention to the objections preferred by the petitioner to the reasons for re-opening, wherein the petitioner had, inter alia, stated:
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> > *"Balance amount of INR 58,33,011 pertains to the actual advances given in the course of business written off during the said AY, and does not include any provisions. Given the above, the same was allowed as deduction under section 28 read with section 36(1) (vii)*

> *of the Act. We wish to mention that the amount of INR 58,3311 was recovered in the subsequent period and accordingly the same was offered to tax in the subsequent year ROI. The above issue was duly examined during the course of assessment proceedings and nature thereof was clarified vide submission dated 11 July 2017, and books of accounts was also produced for verification. "*
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> He submits that the tax effect is nil since the petitioner has already offered the said amount to tax in the next Assessment Year, and in these circumstances, there is no justification for initiation of penalty proceedings. He submits that the petitioner would, in fact, accept the re-assessment order, if the respondent were to drop the penalty proceedings.
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> In these circumstances, till the next date, we stay the penalty proceedings against the petitioner. The respondent should report instructions on the aforesaid offer made by the petitioner and should also file counter-affidavit, in case they wish to contest the same within four weeks. The petitioner is granted four weeks time to prefer an appeal against the re-assessment order.
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> List on 21.07.2020, i.e. the date already fixed."

5. The aforesaid aspect does not appear to have been considered by the authority which has initiated penalty proceedings perhaps on account of the interim order which came to be framed.

6. We accordingly, find no justification to continue the instant writ petition on our board and dispose it of with the following directions:

i. Insofar as the Final Assessment Order is concerned, we leave it open to the writ petitioner to pursue the statutory appeal which has been filed.

ii. While we continue the interim order in respect of penalty proceedings, we accord liberty to the concerned authority to duly examine the contention of the petitioner, as noticed in our order extracted above, and on the basis of which they would contend that there exists no justification for initiation of penalty proceedings.

iii. We also leave it open to the said authority to place the writ petitioner on notice and to proceed to finally decide the question of penalty in accordance with law.

iv. All rights and contentions of respective parties in that respect are kept open.

7. The writ petition shall stand disposed of on the aforesaid terms.

**YASHWANT VARMA, J.**

**PURUSHAINDRA KUMAR KAURAV, J.**

**FEBRUARY 15, 2024/p**