(2021) 05 DEL CK 0157

In the Delhi High Court

Case No : Civil Writ Petition No. 5418 Of 2021

Blue Square Infrastructure LLP — APPELLANT

Vs

National Faceless Assessment Centre, Delhi (Earlier National E-Assessment Centre, Delhi) & Anr — RESPONDENT

Date of Decision : 20-05-2021

Acts Referred:
Income Tax Act, 1961 — Section 143(3), 144B, 156, 271AAC(1), 274

Citation : (2021) 05 DEL CK 0157

Hon'ble Judges : Rajiv Shakdher, J;Talwant Singh, J

Bench : Division Bench

Advocate : Rohit Jain, Aniket D. Agrawal, Manisha Sharma, Ajit Sharma

Final Decision : Allowed

Judgement

Rajiv Shakdher, J

CM APPL. No.16785/2021

1. Allowed, subject to just exceptions.

CM APPL. No.16786/2021

2. The prayer made in the captioned application is to grant extension of time for deposit of court-fee and for filing sworn/notarised/affirmed affidavits.

The captioned application is disposed of with a direction to the petitioner to place on record the duly sworn/notarised/affirmed affidavit and to deposit

the requisite court-fee, within three days of the resumption of the normal and usual work pattern by this court.

W.P.(C) 5418/2021 and CM APPL. No.16784/2021 [Application filed on behalf of the petitioner seeking stay on the operation of the

impugned assessment order and consequent proceedings thereto]

3. Issue notice. Mr. Ajit Sharma, who appears on advance notice on behalf of the respondents, accepts service.

3.1. Mr. Sharma says that he does not wish to file a counter-affidavit, and would rely upon the record placed before the court, for the purposes of the

adjudication of this writ petition.

4. The petition is, therefore, taken up for hearing and final disposal with the consent of the counsels for the parties.

5. Via this writ petition, challenge is laid to the assessment order dated 23.04.2021, passed by respondent no. 1, under Section 143(3) read with Section

144B of the Income Tax Act, 1961 (in short â??the Actâ??). The impugned assessment order concerns the assessment year (in short â??AYâ??)

2018-2019. Besides this, challenge is also laid by the petitioner, to the notice of demand, issued under Section 156 of the Act, and the notice for

initiation of penalty proceedings issued under Section 274 read with Section 271 AAC (1) of the Act. These orders are also of the even date, i.e.,

23.04.2021.

6. Mr. Rohit Jain, who appears on behalf of the petitioner, says that apart from anything else, the show cause notice-cum-draft assessment order

dated 20.04.2021, required the petitioner to file its response by 23:59 hours on 23.04.2021.

6.1. Mr. Jain says that, since the city was under lockdown on account of the pandemic, a request for adjournment was made on 23.04.2021 at about

12:59 hours, via the designated e-portal, maintained by the respondents. In support of this plea, Mr. Jain relies upon the documents appended on pages

99 and 100 of the electronic paper book.

6.2. Furthermore, Mr. Jain says that respondent no. 1 proceeded to pass the impugned assessment order on 23.04.2021, without dealing with the

request for adjournment and without waiting for the timeframe given in the show cause notice-cum-draft assessment order dated 20.04.2021, to

expire.

6.3. It is also Mr. Jain's contention that the impugned assessment order erroneously refers to the date of the show cause notice as 16.03.2021,

whereas the show cause notice-cum-draft assessment order, issued to the petitioner, is dated 20.04.2021. In this context, our attention has been drawn

to paragraph 7 of the impugned assessment order.

7. Mr. Sharma, on the other hand, relies upon the impugned assessment order to resist the petition.

8. Having heard the learned counsels for the parties and perused the record, according to us, at this juncture, we are not called upon to deal with the

merits of the case.

8.1. The petitioner's case is that there has been a breach of the principles of natural justice, inasmuch as respondent no. 1 failed to deal with the

petitioner's request for a short adjournment. The petitioner, as noticed above, has, correctly, pointed out that there has been an undue haste by

respondent no. 1 in passing the impugned assessment order, as he did not even wait for the completion of the timeframe given in the show cause

notice-cum-draft assessment order, dated 20.04.2021, to file a response.

8.2. Furthermore, the impugned assessment order also contains a factual error insofar the date of the show cause notice is concerned which is

incorrectly shown as 16.03.2021 in paragraph 7 of the said notice. We may have overlooked this error, and perhaps, given the benefit of doubt to

respondent no. 1 that this was a typographical error, if respondent no. 1 had given adequate opportunity to the petitioner to respond to the show cause

notice-cum-draft assessment order. In our view, respondent no. 1 could have given a little leeway for filing the response/objections, in view of the

short time gap between the date when the show cause notice-cum-draft assessment order was served on the petitioner [i.e., 20.04.2021], and the

deadline provided therein to file the response/objections i.e., 23.04.2021.

9. Given this position, the best way forward, according to us, is to set aside the impugned assessment order, and proceed further from the stage of the

show cause notice-cum-draft assessment order dated 20.04.2021.

9.1. We also take judicial notice of the fact that the Central Board of Direct Taxes has issued a notification dated 24.04.2021, whereby the timeframe

for completion of assessment has been extended till 30.06.2021.

10. Accordingly, the impugned assessment order dated 23.04.2021 as also the notice for demand, and notice for initiation of penalty proceedings, of

even date, are hereby set aside.

10.1. The petitioner will be at liberty to file its response/objections, to the show cause notice-cum-draft assessment order dated 20.04.2021, within one week from the date of the receipt of a copy of the order passed today.

10.2. Respondent no. 1 shall issue a notice, via e-mail to the petitioner, fixing the date and time for according a personal hearing to the authorised representative of the petitioner.

10.3. Respondent no. 1 shall accord personal hearing to the authorised representative of the petitioner, via video-conferencing (VC) given the fact that the pandemic is on in the city. Mr. Jain says that, if a link for the VC hearing is sent to the petitioner's authorised representative; he/she will participate in the hearing accorded by respondent no. 1.

10.4 Respondent no. 1 will, thereafter, proceed to pass an assessment order, albeit, as per law.

11. The writ petition is allowed in the aforesaid terms. Consequently, pending application stands closed. The case papers shall stand consigned to the record.

