(2021) 05 DEL CK 0193

In the Delhi High Court

Case No : Civil Writ Petition No. 5491 Of 2021

M/S Lokesh Constructions P Ltd — APPELLANT

Vs

Assistant Commissioner Of Income Tax — RESPONDENT

Date of Decision : 28-05-2021

Acts Referred:

Income Tax Act, 1961 — Section 143(3), 143(3A), 143(3B), 144B, 156, 270A, 274

Citation : (2021) 05 DEL CK 0193

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

Bench : Division Bench

Advocate : Gagan Kumar, Ashish Parashar, Vibhooti Malhotra

Final Decision : Disposed Of

Judgement

Rajiv Shakdher, J

CM APPL. 17023/2021

1. Allowed, subject to just exceptions.

CM APPL. 17024/2021

2. The prayer made in the captioned application is to grant exemption from filing requisite court-fee and sworn/notarised/affirmed affidavit. 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) 5491/2021 and CM APPL. 17022/2021 [Application filed on behalf of petitioner, under Section 151 of the Civil Procedure Code,

1908, seeking stay on the operation of order passed by respondent, dated 07.04.2021.]

3. Via this writ petition, challenge has been laid to the assessment order dated 07.04.2021, passed under Section 143(3) read with Section 143(3A) &

143(3B) of the Income Tax Act, 1961 (in short, â??the Actâ??), as also the consequential notice of demand issued under Section 156 of the Act, and

notice for initiation of penalty proceedings issued under Section 274 read with Section 270A of the Act.

4. To be noted, the impugned assessment order concerns Assessment Year (AY) 2018-2019.

5. The principal grievance of the petitioner is that, the impugned assessment order was passed without issuance of a show cause notice-cum draft-

assessment order.

6. Issue notice.

7. Ms. Vibhooti Malhotra, accepts notice on behalf of the respondent/revenue.

7.1 Ms. Malhotra says that, in view of the directions that we propose to pass, she does not wish to file a reply and will argue the matter based on the

record, presently, available with the Court.

7.2. Accordingly, with the consent of the counsel for the parties, the writ petition is taken up for hearing and final disposal.

8. At the outset, Ms. Malhotra, fairly, draws our attention to the judgement passed by this Court, today, in W.P. (C) 5552/2021 [listed on our board

today as Item No. 28], the ratio of which, according to her, will apply, to this matter, as well.

9. As indicated above, the respondent/revenue passed the impugned assessment order, without issuance of a show cause notice-cum-draft assessment

order.

10. It is required to be noted that initially, the petitioner had declared its income as Rs.87,55,390/-; which was revised to Rs.73,59,500/-.

11. Via the impugned assessment order dated 07.04.2021, an addition of Rs.13,95,890/-, has been made to the declared income of the petitioner.

12. To our minds, since there was a variation in the declared income, the respondent was required to issue a show cause notice-cum-draft assessment

order, in consonance with the provisions of Section 144B of the Act and the Faceless Assessment Scheme, 2019. [See: Judgement dated 27.05.2021,

passed in W.P. (C) No. 5552/2021, titled YCD Industries vs. National Faceless Assessment Centre, Delhi]

13. Accordingly, the impugned assessment order, and the consequential notices issued, i.e., notice of demand issued under Section 156 of the Act, and

notice for initiation of penalty proceedings issued under Section 274 read with Section 270A of the Act, are set aside.

14. Liberty is, however, given to the respondent/revenue to pass a fresh assessment order, albeit, as per law.

15. The respondent/revenue will grant a personal hearing to the authorised representative of the petitioner.

16. For this purpose, the respondent/revenue will convene a hearing via the videoconferencing mechanism.

17. The respondent/revenue will also indicate the date and time of the hearing, well in advance, to the petitioner via its registered e-mail id.

18. The writ petition is disposed of in the aforesaid terms. The pending application shall stand closed.