(2021) 05 DEL CK 0158

In the Delhi High Court

Case No : Civil Writ Petition No. 5235 Of 2021, Civil Miscellaneous Application No. 16068 Of 2021

Renew Power Private Limited APPELLANT

Vs

National E-Assessment Centre Delhi RESPONDENT

Date of Decision : 19-05-2021

Acts Referred:
Constitution Of India, 1950 — Article 226
Income Tax Act, 1961 — Section 66(2), 143(3), 144B, 156, 270A, 274

Citation : (2021) 05 DEL CK 0158

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

Bench : Division Bench

Advocate : Ajay Vohra, Aditya Vohra, Ruchir Bhatia

Final Decision : Allowed

Judgement

Rajiv Shakdher, J

1. Via this writ petition, challenge has been laid to the assessment order, dated 22.04.2021, passed 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 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 270A of the Act of even date, i.e., 22.04.2021.

2. On the previous date, i.e., 10.05.2021, while issuing notice in the matter, we had recorded the following:

â??2. Mr. Ajay Vohra, learned senior counsel, who appears on behalf of the petitioner, says that there has been a breach of principles of natural justice.

2.1. According to Mr. Vohra, the show cause notice-cum-draft assessment order dated 18.04.2021 required the petitioner to submit its response by

23:59 hours on 22.04.2021.

3. It is the petitioner's claim that the respondent, in breach of its own timeline, passed an assessment order under Section 143(3) read with Section

144B of the Income Tax Act, 1961, (in short 'the Act') concerning assessment year (AY) 2018-2019 on 22.04.2021 at 14:11 hours.

4. The petitioner avers, that upon becoming aware of the same, it placed its grievance before the revenue via the e-filing portal on 22.04.2021, in

which, it, inter alia, stated that although at about 22:00 hours, it had tried to upload a response to the aforementioned show cause notice-cum-draft

assessment order, the same could not be uploaded.

5. Prima facie, it appears that there has been a breach of principles of natural justice.

6. Since Mr. Ruchir Bhatia, who appears on behalf of the revenue, seeks an accommodation to revert with instructions, list the matter on 19.05.2021.

7. In the meanwhile, there shall be a stay on the operation of the impugned assessment order dated 22.04.2021, as well as the notice of demand issued

under Section 156 and the notice initiating penalty proceedings under Section 270A of the Act.

8. This order will operate till further orders of the court.

9. In case, instructions are received by Mr. Bhatia to resist the petition, a counter-affidavit will be filed before the next date of hearing.â??

3. Mr. Ruchir Bhatia, who appears on behalf of the respondent/revenue, has returned with instructions. He says that his instructions are to resist the

writ petition. To be noted, though, counter-affidavit has not been filed, Mr. Bhatia chooses to resist the petition based on the record presently available

with the Court.

3.1. We have queried Mr. Bhatia as to, whether the facts adverted to in our order dated 10.05.2021, are disputed. Mr. Bhatia says that though the

facts stated therein are not disputed, the relief sought in the writ petition is resisted on two grounds:

(i) First, the petitioner has an alternative remedy available to it under the Act.

(ii) Second, on the previous occasions, that is, prior to the issuance of the show cause notice-cum-draft assessment order dated 18.04.2021, several

opportunities were given to the petitioner.

4. Having heard Mr. Ajay Vohra, learned senior counsel, who appears for the petitioner and Mr. Bhatia, we are of the view that the impugned orders,

referred to hereinabove, cannot be sustained.

4.1. The reason being that, although, via the show cause notice-cum-draft assessment order dated 18.04.2021, the petitioner was given leave to

respond to the same by 23.59 hours on 22.04.2021, the impugned assessment order was passed on 22.04.2021 at 14.11 hours, i.e., much before the

time to file the response elapsed.

4.2. The petitioner has taken the stand, as indicated in our order of 10.05.2021, that it had made attempts on 22.04.2021 to upload the response to the

aforementioned show cause notice-cum-draft assessment order, which failed, perhaps, due to the fact that the impugned assessment order had

already been passed.

5. As noted above, we have reached the conclusion that the impugned orders cannot be sustained, as none of these facts, which are stated in our

order of 10.05.2021, have been put in issue.

6. The argument that an alternate statutory remedy is available to the petitioner does not find favour with us as it is simply a self-imposed limitation

which does not prevent a Court from entertaining a writ petition in a fit case. [See Calcutta Discount Co. Ltd. vs. ITO, (1961) 2 SCR 241; Also see

Whirlpool Corpn. vs. Registrar of Trade Marks, (1998) 8 SCC 1] As recorded by us hereinabove, the impugned assessment order was passed before

the time accorded to the petitioner to file a response, expired. The denial of opportunity to the petitioner to place before the assessing officer, its

objections and/or explanations by way of a response has led to breach of principles of natural justice, resulting in grave civil consequences for the

petitioner.

â??27. Mr Sastri mentioned more than once the fact that the Company would have sufficient opportunity to raise this question viz. whether the

Income Tax Officer had reason to believe that underassessment had resulted from non-disclosure of material facts, before the Income Tax Officer himself in the assessment proceedings and if unsuccessful there before the appellate officer or the Appellate Tribunal or in the High Court under

Section 66(2) of the Indian Income Tax Act. The existence of such alternative remedy is not however always a sufficient reason for refusing a party

quick relief by a writ or order prohibiting an authority acting without jurisdiction from continuing such action.â??

â??14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the

Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo

warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for â??any other

purposeâ??.

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ

petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the

High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at

least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has

been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.

â?¦â??

6.1 The other argument advanced on behalf of the respondent/revenue that several opportunities were given to the petitioner, before issuance of the

show cause notice-cum-draft assessment order, and hence, merely because the impugned assessment order was passed prior to the expiration of

deadline prescribed for preferring a response, the same would not result in violation of principles of natural justice â?" is, equally, untenable. The

reason is this: once the respondent/revenue issued a show cause notice-cum-draft assessment, as required in law, which proposed a variation in the

petitionerâ?s declared income, it was obliged to give an opportunity to the petitioner to file its objections. With the issuance of the show cause notice-

cum-draft assessment order, the respondent/revenue firmed up its position as to how it wishes to move further in the matter. Notices issued prior to

this stage are inquisitorial in nature. These are issued to ferret information and make inquiries with the object to, inter alia, ensure that there is no

understatement of income or a claim of excessive loss, or a case involving under payment of tax; but once a show cause notice-cum-draft assessment

order is issued, the noticeeâ??s statutory right to file a reply and to seek a personal hearing kicks in, which cannot be curtailed.

6.2. If Mr Bhatiaâ?s argument is accepted, it will not only impair, to our minds, the petitioner statutory rights, but would also disrupt the scheme

evolved for assessment under Section 144B of the Act.

7. The writ petition is, accordingly, allowed. The pending application shall stand disposed of. The impugned assessment order, the notice of demand

and the notice for initiation of penalty proceedings, dated 22.04.2021, are quashed.

8. The respondent/revenue is, however, given the liberty to pass a fresh assessment order, albeit, as per law.