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

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Judgment reserved on: 22.08.2023

Judgment pronounced on: 06.09.2023

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W.P.(C) 14224/2022 & CM APPL. 43451/2022

APHV INDIA INVESTCO. PRIVATE LIMITED..... Petitioner

Through: Mr Kamal Sawhney and Mr Nikhil
Agarwal, Advocates.

versus

ASSISTANT COMMISSIONER OF INCOME TAX

CIRCLE INT TAX 1 (1)(1), DELHI & ANR..... Respondents

Through: Mr Puneet Rai, Sr. Standing Counsel
and Ms Adeeba Mujahid, Jr. Standing
Counsel.

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W.P.(C) 14235/2022 & CM APPL. 43487/2022

APHV INDIA INVESTCO. PRIVATE LIMITED..... Petitioner

Through: Mr Kamal Sawhney and Mr Nikhil
Agarwal, Advocates.

versus

ASSISTANT COMMISSIONER OF INCOME TAX

CIRCLE INT TAX 1 (1)(1), DELHI & ANR..... Respondents

Through: Mr Puneet Rai, Sr. Standing Counsel
and Ms Adeeba Mujahid, Jr. Standing
Counsel.

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W.P.(C) 6189/2023 & CM APPL. 24332/2023

APHV INDIA INVESTCO. PRIVATE LIMITED..... Petitioner

Through: Mr Kamal Sawhney and Mr Nikhil
Agarwal, Advocates.

versus

ASSISTANT COMMISSIONER OF INCOME TAX

CIRCLE INT TAX 1 (1)(1), DELHI..... Respondent

Through: Mr Ruchir Bhatia, Sr. Standing
Counsel.

+ **W.P.(C) 6190/2023 & CM APPL. 24334/2023**
APHV INDIA INVESTCO PRIVATE LIMITED..... Petitioner
Through: Mr Kamal Sawhney and Mr Nikhil
Agarwal, Advocates.
versus
ASSISTANT COMMISSIONER OF INCOME TAX
CIRCLE INT TAX 1 (1)(1), DELHI..... Respondent
Through: Mr Ruchir Bhatia, Sr. Standing
Counsel.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MR. JUSTICE GIRISH KATHPALIA
[Physical Hearing/Hybrid Hearing (as per request)]

GIRISH KATHPALIA, J.:

1. These four writ petitions brought by the assessee under Article 226 of the Constitution of India are taken up together for disposal on account of common legal and factual matrix.

2. Writ petitions WP(C) 14224/2022 and WP(C) 14235/2022 pertain respectively to the Assessment Years 2016-17 and 2015-16, and assail the Assessment Orders dated 10.09.2022, draft assessment orders dated 26.07.2022, demand notices dated 10.09.2022 and other consequential proceedings with a prayer for remanding the matters to the Assessing Officer for fresh assessment after granting opportunity to the petitioner to be heard.

2.1 The remaining two writ petitions WP(C) 6189/2023 and WP(C) 6190/2023, pertain respectively to Assessment Year 2016-17 and 2015-16

and assail Penalty Orders dated 30.03.2023, passed under Section 271(1)(c) of the Income Tax Act.

3. We heard learned counsel for both sides and perused records. At the stage of final arguments, both sides in all fairness agreed that these writ petitions can be disposed of presently on the limited ground of violation of principles of natural justice.

4. Briefly stated, circumstances relevant for present purposes are as follows.

4.1 As claimed by the respondent/revenue, pertaining to the assessment years in question, several notices under Section 148, Section 142(1) of the Act as well as show cause notice before making best judgment assessment were issued to the petitioner during the period spread between 17.03.2021 and 12.07.2022.

4.2 But according to the petitioner/assessee, none of the said notices except notice dated 12.07.2022 issued under Section 142(1) of the Act was received by it.

4.3 By way of the said notice dated 12.07.2022, the Assessing Officer requisitioned certain information and directed the petitioner to upload the same on the web portal of the Income Tax Department and also to send the same through email.

4.4 The petitioner explains that a brief reply to the said notice dated 12.07.2022 was sent on 20.07.2022, requesting for extension of time till 05.08.2022 for filing a detailed reply, clarifying that none of the earlier notices had been received.

4.5 The petitioner further explains that as its concerned official forgot the password, it could not login to the web portal and then on 21.07.2022, it approached the e-filing Manager at efilingwebmanager@incometax.gov. It is stated that after several e-mail exchanges between the petitioner and e-filing team for re-setting the password of the web portal, the request for password re-setting was rejected on 23.08.2022 on the ground that a foreign mobile phone number was not acceptable and the petitioner being a foreign company should obtain Indian mobile phone number for password re-set facility. Realizing that uploading the reply on web portal would take time, the petitioner sent its reply dated 23.08.2022 to the Assessing Officer clarifying that the source of funds in question was the capital contribution from two foreign companies which hold the petitioner company.

4.6 Evidently, in the meanwhile, the Assessing Officer had already passed a draft assessment order on 26.07.2022 based on best judgment which did not acknowledge the brief reply dated 20.07.2022 filed on behalf of the petitioner. Ultimately, on the lines of the draft Assessment Order, the Assessing Officer passed the Assessment Order dated 10.09.2022, which is impugned in the instant proceedings.

5. The material on record, genuineness whereof is not in dispute reflects as follows.

5.1 The notice dated 12.07.2022 under Section 142(1) of the Act calls upon the petitioner/assessee to produce or cause to be produced the accounts and documents called for as per annexure on or before 11:00am of 15.07.2022.

5.2 The printout of email dated 20.07.2022 sent by the petitioner/assessee specifically claims that none of the previous notices were received by the petitioner; that the address stated on those notices was not the registered address of the petitioner since the year 2016; and that the petitioner had every intention of complying with the information sought but requested for extension of time not later than 05.08.2022. In the said reply email dated 20.07.2022, the petitioner also disclosed certain vital facts pertaining to the dispute.

5.3 Despite that, in the draft assessment order dated 26.07.2022 the Assessing Officer recorded that the petitioner/assessee had neither filed any reply nor sought any adjournment. Even in the impugned final Assessment Order dated 10.09.2022, the Assessing Officer recorded thus:

“5.1 Thereafter, notice under Section 142(1) of the Income Tax Act 1961 dated 21.06.2022 and 12.07.2022 issued and served to the assessee company on the functional email address provided by the Competent Authority of Singapore but, again this time assessee choose to follow the same attitude as followed by them in the entire assessment proceedings”.

6. It would appear from the above discussion that the impugned Assessment Orders dated 10.09.2022, the draft assessment orders dated 26.07.2022 and the consequential demand notices dated 10.09.2022 are clearly afflicted by two vices, discussed hereafter.

7. Firstly, it seems that the Assessing Officer inadvertently overlooked the email reply dated 20.07.2022 of the petitioner, wherein the petitioner not just sought extension of time till 05.08.2022 to respond but also disclosed vital facts pertaining to its case. However, in the impugned draft assessment orders and the final Assessment Orders, the Assessing Officer recorded that no reply to the notice under Section 142(1) of the Act was submitted by the petitioner/assessee. On account of this clear non-application of mind, the impugned draft assessment orders, the final Assessment Orders and the consequential demand notices cannot be sustained.

8. Secondly, the notice dated 12.07.2022 under Section 142(1) of the Act was clearly vitiated on account of granting hardly three days to the petitioner to respond. Denial of sufficient time to respond was not just an abrogation of *jus naturale* but the same also infringed clause B(1) of the Standard Operating Procedure dated 19.11.2020 of the CBDT, according to which normally a response time of 15 days has to be given to the assessee in order to respond to the notice under Section 142 of the Act.

9. That being so, the impugned draft assessment orders dated 26.07.2022, the final Assessment Orders dated 10.09.2022 and demand

notices dated 10.09.2022, assailed in WP(C) 14224/2022 and WP(C) 14235/2022 are liable to be set aside. And consequently, the penalty orders dated 30.03.2023, assailed in WP(C) 6189/2023 and WP(C) 6190/2023 also are liable to be set aside.

10. In view of above discussion, all these four writ petitions are allowed and accordingly, the draft assessment orders dated 26.07.2022, final Assessment Orders dated 10.09.2022, the demand notices dated 10.09.2022 and the Penalty Orders dated 30.03.2023 are set aside, remanding the matters back to the Assessing Officer with the directions to afford a fair hearing to the petitioner/assessee in accordance with law after issuing fresh notices under Section 142(1) of the Act.

11. File be consigned to records.

(GIRISH KATHPALIA)
JUDGE

(RAJIV SHAKDHER)
JUDGE

SEPTEMBER 06, 2023/as