

\$~7 (2021)

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

+ **W.P.(C) 6168/2021**

ONE MOBIKWIK SYSTEMS PRIVATE LIMITED ..... Petitioner  
Through:Mr. Deepak Chopra, Mr. Pratishtha  
Singh and Mr. Manuj Sabharwal,  
Advs.

*versus*

DEPUTY COMMISSIONER OF INCOME TAX ..... Respondent  
Through:Mr. Sunil Agarwal, Sr. Standing  
Counsel for revenue

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SHAKDHER**

**HON'BLE MR. JUSTICE TALWANT SINGH**

**ORDER**

% **07.07.2021**

[Court hearing convened via video-conferencing on account of COVID-19]

**CM APPL. 19554/2021**

1. Allowed, subject to just exceptions.

**W.P.(C) 6168/2021 & CM APPL. 19553/2021** [*Application filed on behalf of the petitioner seeking stay on the operation of the impugned assessment order and consequential actions*]

2. Issue notice. Mr. Sunil Agarwal learned senior standing counsel accepts notice on behalf of the respondent/revenue.

2.1. Mr. Agarwal says that, in view of the directions that we intend to issue, he does not wish to file a reply, and therefore, will argue the matter based on the record presently available with the Court.

3. Thus, with the consent of the counsel for the parties, the matter is taken up for final hearing and disposal at this stage itself.

4. This writ petition is directed against the assessment order dated

15.06.2021 passed under Section 143(3) of the Income Tax Act, 1961 (in short „the Act“), for the assessment year (AY) 2017-2018.

4.1. Besides this, challenge is also laid to the notice of demand dated 15.06.2021, issued under Section 156 of the Act, and consequential penalty proceedings initiated against the petitioner.

5. Briefly, the facts of the case are as follows:

5.1. On 07.11.2017, the petitioner had filed its return of income *vis-a-vis* AY 2017-2018, *albeit*, electronically. In the said return, the petitioner had declared a loss amounting to Rs.102,86,70,817/-.

5.2. It appears that, the petitioner's case was picked up for scrutiny, and accordingly, a notice under Section 143(2) of the Act was issued. Thereafter, during the course of the assessment proceedings, several notices were served on the petitioner under Section 142(1) of the Act whereby information was sought from the petitioner. It is the petitioner's case that, as and when information was sought, the same was furnished.

5.3. The record shows that, as on previous occasions, a show cause notice was served on the petitioner, on 11.06.2021, at about 5:44 P.M. To be noted, 11.06.2021 was a Friday. The said show cause notice, issued under Section 142(1) of the Act, required the petitioner to furnish confirmation(s) and audited financial statements of non-residential investors mentioned therein. The petitioner was also called upon to show cause as to, why the foreign remittances received from the investors named therein should not be treated as unexplained income and added to the petitioner's returned income under Section 68 of the Act. The petitioner was, however, given time only till 11:00 A.M. on 14.06.2021, which was a Monday.

5.4. The petitioner claims that, it was unable to respond to the aforementioned show cause notice dated 11.06.2021, as the e-filing portal, maintained by the revenue, was not functional. It is claimed by the petitioner that, even on 15.06.2021, when the impugned assessment order was passed, the e-filing portal was dysfunctional.

5.5. Concededly, via the impugned assessment order, the respondent/revenue has added, a part of the investments made by the non-residential investors under Section 68 of the Act. The amount added to the petitioner's income is Rs.51,28,18,774/-. The respondent/revenue has treated the said sum as, unexplained income under Section 68 of the Act.

5.6. Accordingly, the respondent/revenue has levied tax at the rate of 78 percent on the aforesaid amount by taking recourse to the provisions of Section 115BBE of the Act. As a result, the respondent/revenue has raised a demand amounting to Rs.58, 30,02,160/-.

5.7. The petitioner asserts that, since not only the timeframe given to respond to the show cause notice, dated 11.06.2021, was short but also the fact that the e-filing portal was dysfunctional, it caused infringement of its legal rights.

5.8. Furthermore, it is also asserted by the petitioner that, the respondent/revenue, in his haste, to pass the assessment order has failed to take notice of the fact that the petitioner had filed a loss return, in which, loss to the extent of approximately Rs.102 crores was declared.

5.9. In other words, according to the petitioner, assuming without admitting that, the addition made by the Assessing Officer (in short „AO“) was tenable, it had to be adjusted against the loss claimed by the petitioner.

6. Mr. Agarwal submits that, the record of the case would show that several notices under Section 142(1) of the Act were issued, and information was sought from the petitioner from time to time.

6.1. According to him, the petitioner has kept back, if not full, some bit of the information. By way of an example, Mr. Agarwal has drawn our attention to the fact that, the Foreign Inward Remittance Certificates (FIRC) concerning GMO Global Payment Fund Investment Partnership [in short “GMO”] has not been furnished to the AO.

6.2. It is required to be noticed that the amount invested by the said entity (which is located in Japan) is Rs.13,50,05,596/-.

7. Mr. Deepak Chopra, who appears for the petitioner, on the other hand, submits that, every bit of information which was sought from time to time was furnished to the respondent to the AO.

7.1. Mr. Chopra says that, insofar as the FIRC concerning GMO is concerned, the same was not sought, and therefore, perhaps, was not furnished. It is Mr. Chopra's submission that, this information can also be furnished to the respondent/revenue along with the information sought for in the show cause notice dated 11.06.2021.

8. We have heard the learned counsel for the parties for some time and also perused the record.

8.1. We are of the view that, given the fact that, the timeframe set out in the show cause notice dated 11.06.2021 was extremely narrow, and that the e-filing portal was dysfunctional – these are good enough reasons for us, to set aside the impugned assessment order, with liberty to the AO to continue the assessment proceedings from the stage at which they were positioned when the show cause notice dated 11.06.2021 was issued. It is ordered accordingly.

8.2. We may also clarify that the respondent/revenue will be at liberty to call for further information, if thought necessary, before proceeding to frame the assessment order. In particular, the petitioner will furnish the FIRC concerning GMO, which is presently not on record.

8.3. Furthermore, Mr. Chopra assures us that the petitioner will render assistance in every form to the respondent/revenue in passing the fresh assessment order. The statement of Mr. Chopra is taken on record.

9. The writ petition and the pending application are disposed of in the aforesaid terms.

10. Needless to add, the observations made hereinabove would not impact the fresh assessment order that the respondent/revenue will pass in the matter concerning the petitioner.

**RAJIV SHAKDHER, J**

**TALWANT SINGH, J**

**JULY 7, 2021**

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[Click here to check corrigendum, if any](#)

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