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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 3440/2007

SMCC CONSTRUCTION INDIA LTD. Petitioner

Through: Mr.S.Nanda Kumar, Advocate
with Mr.Achin Goel, Advocate.

versus

DY. COMMISSIONER OF INCOME TAX Respondent

Through: Mr.Sanjeev Sabharwal, Advocate

CORAM:**HON'BLE MR. JUSTICE SANJIV KHANNA****HON'BLE MR. JUSTICE R.V.EASWAR****ORDER**

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31.01.2012**CM No. 1359/2012**

Revenue has filed this application for early hearing of the writ petition. Irony is that the Revenue has not filed the counter affidavit in this writ petition which was filed in 2007. Due to said lapse and failure to file the counter affidavit, the writ petition was admitted.

It is also noticed that the Court has stayed passing of final order. Thus assessment proceedings can continue.

Learned counsel for the non-applicant/petitioner has rightly



pointed out that the petitioner has filed objections to the reope but the same have not been disposed of by Assessing Officer by passing a speaking order in terms of the decision of the Supreme Court in ***GKN Driveshafts (India) Ltd. vs. ITO & Ors. (2003) 259 ITR 19 (SC)***.

In view of the aforesaid facts and decision of the Supreme Court in *GKN Driveshafts (India) Ltd.* we dispose of the present application and the writ petition directing as under:-

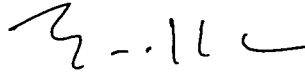
1. The petitioner is given liberty to file additional objections within a period of two weeks before the Assessing Officer.
2. The petitioner will appear before the Assessing Officer on 1st March, 2012 at 2:30 p.m. when personal hearing will be granted to the authorised representative on the objections filed by them to the reopening of assessment and thereafter, the assessing officer will pass a speaking order as required and mandated by the Supreme Court in *G.K.N. Driveshaft (India) Ltd.,(supra)*. The order will be communicated to the petitioner/his authorized representative by registered post.
3. If required and appropriate, the petitioner will be at liberty to thereafter challenge the order including the reopening under



Section 147-148 of the Act.

4. In case of an adverse order, the Assessing Officer will give at least one month's time to the petitioner to challenge the order passed in terms of the aforesaid decision of the Supreme Court. The interim order directing that no final assessment order shall be passed, shall continue to remain in operation ^{till} for this period.

It is clarified that we have not expressed any opinion on the merits of the case of either side. The application and the writ petition are disposed of. No costs.


SANJIV KHANNA, J


R.V.EASWAR, J

JANUARY 31, 2012

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