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

+ W.P.(C) 6567/2022 & CM APPLs.19956/2022, 20109/2022

JINDAL DYECHEM INDUSTRIES PVT. LTD. - SUCCESSOR TO
M/S LUMAX CAPLEASE PRIVATE LIMITED Petitioner

Through: Mr. Ved Jain, Advocate with
Ms. Richa Mishra and Mr. Nishchay
Kantoor, Advocates.

versus

DEPUTY COMMISSIONER OF INCOME TAX, CIRCLE 13-1 &
ORS. Respondents

Through: Mr. Ajit Sharma, Advocate.

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Date of Decision: 26th April, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

MANMOHAN, J (Oral):

1. Present writ petition has been filed challenging the reassessment notice dated 27th March, 2021 issued under Section 148 of the Income Tax Act, 1961 [‘the Act’] as well as the assessment order dated 30th March, 2022 passed under Section 147 read with Section 143(3) of the Act for assessment year 2014-15.

2. Learned counsel for the petitioner states that the impugned notice as well as the impugned order are *void ab initio* as they have been issued in the name of “M/s Lumax Caplease Pvt. Ltd.” a non-existent entity which had merged with the Petitioner company with effect from 1st April, 2013 vide



order dated 6th August, 2014 passed by this Court under Section 394 of the Companies Act, 1956.

3. Learned counsel for the petitioner further states that the income alleged to have escaped assessment had been offered to tax in the hands of the amalgamated entity and an assessment order dated 29th December, 2016 had been passed accepting the same.

4. He also states that the impugned assessment order has been passed in violation of the principle of natural justice as the Petitioner was not given an opportunity of being heard. He points out that show cause notice dated 28th March, 2022 though signed on 14:52 hours on 29th March, 2022 required the Petitioner to comply with the same by 12:00 PM on 29th March, 2022 i.e. the compliance date was set prior to the issuance of the notice.

5. Issue notice.

6. Mr. Ajit Sharma, Advocate accepts notice on behalf of the respondents. He states that in the present case, the impugned assessment order has been passed in the name of “Jindal Dyechem Industries Pvt. Ltd.” i.e., the amalgamated entity. He also states that the issue as to whether income has escaped assessment or not is a question of fact which the petitioner can agitate in appeal proceedings.

7. Having heard learned counsel for the parties, this Court is of the view that even if the submission of learned counsel for the respondents is accepted then also the impugned assessment order is liable to be set aside as the petitioner had no opportunity to deal with or respond to the show cause notice dated 28th March, 2022 as it had been issued after the date and time of compliance had expired.



8. Consequently, the impugned assessment order is set aside on the short ground of being violative of principle of natural justice and the matter is remanded back to the Assessing Officer for fresh adjudication.

9. The petitioner shall file its response to the show cause notice dated 28th March, 2022 within two weeks. The Assessing Officer is directed to fix the date of hearing after four weeks and decide the same in accordance with law after giving an opportunity of hearing to the petitioner. The rights and contentions of all the parties are left open.

10. In view of the above, the present writ petition and applications stand disposed of.

MANMOHAN, J

DINESH KUMAR SHARMA, J

APRIL 26, 2022
AS