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

+ **W.P.(C) 6369/2021 & CM No.14458/2022**

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Date of decision: 22.08.2022

GE INDIA INDUSTRIAL PVT LTD

..... Petitioner

Through: Mr Sachit Jolly, Mr Rohit Garg, Ms
Disha Jham and Mr Sohun Dua,
Advs.

versus

DEPUTY COMMISSIONER OF
INCOME TAX & ORS.

..... Respondents

Through: Mr Abhishek Maratha, Sr. Standing
Counsel for R-1 to 3.
Mr Ruchir Bhatia, Sr. Standing
Counsel with Mr Shlok Chandra, Jr.
Standing Counsel along with Ms
Mansie Jain and Mr Keshav Garg,
Adv. for R-4/DRP.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MS. JUSTICE TARA VITASTA GANJU

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

1. The substantive prayers made in the writ petition read as follows:

“a. Writ of Certiorari or any other appropriate Writ, Order or Direction under Article 226 / 227 of the Constitution of India quashing the Impugned Order dated 09.06.2021 alongwith notice of demand under Section 156 of the Act passed by the Respondent No. 1;

b. Ad-interim direction to the Respondent No. 1 stay all proceedings/demand raised pursuant to Impugned Order dated 09.06.2021;

c. An ad-interim stay on the penalty proceedings initiated vide Notice dated 09.06.2021 issued under Section 270A of



the Act by the Respondent No. 1”

2. With the consent of the counsel for the parties, the writ petition and the captioned application are taken up for hearing and final disposal at this stage itself.

3. The first substantive order in the writ petition was passed on 15.07.2021. The relevant portion of the said order is extracted hereafter:

“W.P.(C) 6369/2021 and CM APPL. 20026/2021 [Application filed on behalf of the petitioner seeking stay on the operation of the impugned assessment order and consequential actions]

2. Via this writ petition, challenge has been laid to the final assessment order dated 09.06.2021, passed by respondent no. 1 under Section 143(3) and 144C(3) read with Section 144B of the Income Tax Act, 1961 (in short ‘the Act’), as also the notice of demand, issued under Section 156 of the Act and notice for initiation of penalty proceedings, issued under Section 270A of the Act.

2.1. To be noted, the impugned assessment order concerns the assessment year (AY) 2017-2018.

3. According to Mr. Sachit Jolly, who appears on behalf of the petitioner, the draft assessment order was passed on 30.04.2021.

3.1. The petitioner, in accordance with Section 144C of the Act, filed its objections qua the aforesaid order, albeit, via e-mail with the Dispute Resolution Panel (in short ‘DRP’) on 31.05.2021, which was duly acknowledged by the DRP via communication dated 01.06.2021. (See page 199 of the paper book.)

3.2. Mr. Jolly says that, since the e-filing portal maintained by the revenue was inoperative till the last week of June 2021, the petitioner could not upload the aforementioned objections on the e-portal.

3.3. It is, therefore, the contention of Mr. Jolly that, the final assessment order dated 09.06.2021 has been passed



without dealing with the objections lodged qua the draft assessment order dated 30.04.2021.

4. On the other hand, Mr. Abhishek Maratha, who appears on behalf of the respondents/revenue, says that the objections filed with the DRP were also required to be filed with the Assessing Officer (in short 'AO').

4.1. It is Mr. Maratha's contention that, since the objections qua the draft assessment order, as noticed above, were not filed with the AO, he acted in accordance with the jurisdiction conferred upon him and hence the impugned final assessment order dated 09.06.2021 ought not to be interdicted. In support of this plea, Mr. Maratha relies upon Section 144(C)(2)(b) of the Act.

5. Having heard the learned counsel for the parties, according to us, Mr. Jolly has set up, at least at this stage, a prima facie case.

5.1. While Mr. Maratha is right in submitting that the objections qua the draft assessment order had to be filed not only with the DRP, but also with the AO, under the relevant provisions of the Act, however, in our view, the aforesaid provision does not lay down that they had to be filed simultaneously.

5.2. Therefore, if an attempt had to be made by the petitioner to file the copy of the objections qua the draft assessment order, which were filed before the DRP, with the AO immediately after 31.05.2021, the e-filing portal had to remain functional; e-mail not being the mode applicable qua the AO. AO, concededly, is the national faceless assessment centre.

6. Given the foregoing, we are inclined to issue notice. It is ordered accordingly.

6.1. Mr. Maratha accepts notice on behalf of the respondents/revenue.

6.2. Counter-affidavit will be filed within the next two weeks. Rejoinder thereto, if any, will be filed before the next date of hearing.

7. In the meanwhile, there shall be a stay on the operation of the impugned assessment order dated 09.06.2021 as



*well as the consequential notices concerning demand and initiation of penalty proceedings.
8. List the matter on 23.08.2021.”*

3.1. Thereafter, the matter came up for hearing on the 23.08.2021. Although time had been granted on the previous date i.e., 15.07.2021, to the counsel for the respondents/revenue to file a counter-affidavit, at request, further four weeks were granted for the said purpose. The interim order passed on 15.07.2021 was, however, made absolute during the pendency of the writ petition. Consequently, CM 20026/2021 was disposed of.

3.2. On the next date of hearing i.e., 13.01.2022, since the counsel for the respondents/revenue was not available, the matter was directed to be listed on 23.02.2022. In the meanwhile counsel for the respondents/revenue was directed to revert with instructions as to whether, the issue raised in the writ petition were covered by the judgment dated 15.12.2021, rendered in W.P.(C) 11609/2021, titled *Fiberhome India Pvt. Ltd. v National E-Assessment Centre*.

3.3. Thereafter, the matter came up before the Court for hearing on 23.02.2022. On that date, the counsel for the assessee informed us that despite the interim order dated 15.07.2021 (which was made absolute on 23.08.2021), the Dispute Resolution Panel-1 (DRP-1) had passed an order dated 21.01.2022, ignoring the interim order passed by this Court. Accordingly, the counsel for the assessee was granted leave to move an appropriate application.

3.4. Besides this, counsel for the respondents/revenue was directed to return with instructions concerning the issue raised in the order dated 13.01.2022 i.e. as to whether or not the controversy arising in the present writ petition



was covered by the judgment rendered by the Division Bench of this Court in *Fiberhome India*.

3.5. It is in this background that the petitioner moved an interlocutory application i.e., CM. 14458/2022. In this application, the following substantive prayer was made by the petitioner:

“(i) Stay the operation of the assessment order dated 25.02.2022 passed by Respondent No.1 in contravention of the order dated 23.02.2022 passed by this Hon'ble Court.”

3.6. Given the averments made in the application, notice was issued on 24.03.2022 and the operation of the assessment order dated 25.02.2022 passed by respondent no. 1 was stayed.

3.7. Furthermore, on the said date, we had also directed that the Assistant Commissioner of Income Tax (OSD), Range -10, New Delhi shall remain physically present in the Court on the next date of hearing.

3.8. When the matter next came up for hearing i.e., on 28.03.2022, after hearing the counsel for the parties, the following was recorded:-

“CM APPL. 14458/2022

1. Pursuant to direction contained in the order dated 24.03.2022, Dr. Manoj Kumar, Assistant Commissioner of Income Tax, Range-10, New Delhi is present in court.

2. There appears to be a systemic problem with regard to the implementation of the directions issued by the Court, on the judicial side.

2.1. The respondents/revenue are, therefore, directed to file a reply to the above-captioned application, as to how orders, interim or final, once issued by the Court, are brought to the notice of the relevant officers, especially the Assessing Officers.

2.2. Since we are told that the respondents/revenue are



operating in a “faceless” environment, there is, according to us, an immediate need to set in place a system which ensures that the orders passed by a court are taken cognizance of and adhered to.

2.3. Having regard to the foregoing, the aforesaid reply will be filed within the next two weeks.

3. Furthermore, we are inclined to accept the submission of Mr Sachit Jolly, who appears on behalf of the petitioner, that the Dispute Resolution Panel (DRP) should be arrayed as a party to the present proceedings.

3.1. It is ordered accordingly.

3.2. The counsel for the petitioner will file an amended memo of parties within one week.

4. List the above-captioned application on 21.04.2022.

5. In the interregnum, interim orders passed by this court, will continue to operate.

6. Dr Manoj Kumar will remain present in the Court on the next date of hearing as well.”

3.9. Thereafter, the matter was taken up for hearing on 21.04.2022. Since the Bench was not satisfied with the manner in which DRP-1 had proceeded in the matter, it was directed that a proper affidavit be filed on behalf of DRP-1.

3.10. Although an affidavit was filed, as noted in the order dated 23.05.2022, it was found that the affidavit did not deal with the concerns raised by the Bench on the previous date of hearing, and hence, based on the request made by the counsel for the respondents/revenue, they were directed to file a better affidavit.

3.11. Furthermore, interim orders dated 23.02.2022 and 24.03.2022 were made absolute during the pendency of the writ petition.

4. Pursuant to the last order dated 23.05.2022, a fresh affidavit has been filed on behalf of DRP-1 dated 10.08.2022.



5. The affidavit filed on behalf of DRP-1 by Ms Bahni Kumari Telenga, Secretary, DRP-1, is, *inter alia*, suggestive of the fact that there was a misunderstanding concerning the import of the order passed by this Court on 15.07.2021, whereby the operation of the final assessment order dated 09.06.2021 was stayed, along with consequential notices issued thereupon, relating to demand and initiation of penalty proceedings.

5.1. The affiant claims that directions were issued on 21.01.2022 by DRP-1, based on a misunderstanding that, although the aforementioned final assessment order had been stayed, the proceedings before DRP-1 had not been stayed.

5.2. This, according to Mr Ruchir Bhatia, learned counsel, who appears on behalf of the respondent/revenue, led to the issuance of yet another assessment order dated 25.02.2022, despite this Court's order dated 23.02.2022.

5.3. Mr Bhatia says that in view of the stand taken on behalf of the respondents/revenue in the aforementioned affidavit, the assessment order dated 09.06.2021, along with the directions issued by DRP-1 on 21.01.2022 and the consequent assessment order dated 25.02.2022, cannot stand the scrutiny of law.

6. Given this position, the aforementioned assessment orders i.e., orders dated 09.06.2021 and 25.02.2022, along with the impugned directions issued by DRP-1 dated 21.01.2022, shall stand quashed.

6.1. The matter shall stand remitted to DRP-1 for a fresh examination of the issues at hand.

7. Consequently, the writ petition and captioned application are disposed of in the aforesaid terms.



8. Needless to state, the fact that we have set aside the assessment orders and the directions issued by DRP-1, i.e., the order of DRP-1 dated 21.01.2022, will not come in the way of DRP-1, in deciding the matter on merits.
9. The writ petition shall stand disposed of in the aforesaid terms.
10. The case papers shall stand consigned to the record.
11. The date already fixed in the matter, i.e., 13.09.2022, shall stand cancelled.

(RAJIV SHAKDHER)
JUDGE

(TARA VITASTA GANJU)
JUDGE

AUGUST 22, 2022/aj

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