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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 27.03.2023

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W.P.(C) 1948/2022

MODI INDUSTRIES LIMITED

..... Petitioner

Through: Mr Rohit Jain & Mr Saksham
Singhal, Advs.

versus

DEPUTY COMMISSIONER OF INCOME TAX & ORS.

..... Respondents

Through: Mr Abhishek Maratha, Sr. Standing
Counsel with Mr Akshat Singh, Jr.
Standing Counsel.

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 record shows that the first substantive hearing in the matter was held on 04.02.2022. On that day, after hearing counsel for the parties, we had noted the broad contours of the case and issued notice. For the sake of convenience, the relevant part of the order dated 04.02.2022 is set forth hereafter:

“4. At the heart of the matter, according to Mr Jain, is the purported dissonance in the sales turnover, as indicated in the ITR and the Tax Audit Report [i.e., Form 3CD]; an aspect which has led to the initiation of steps for petitioner’s reassessment.

4.1. Mr Jain says that since the reconciliation statement was provided pursuant to a query being raised, and before the assessment order was passed, there was no occasion to issue the impugned notice dated 30.03.2021.

4.2. It is Mr Jain’s contention that since the impugned action constitutes a change of opinion, the AO cannot take recourse to the provisions of Section 147/148 of the Act for reassessing the petitioner.

5. Prima facie, we are of the view that this is a case of change of opinion, inasmuch as a specific query was raised by the AO concerning purported discrepancy in the sales turnover as disclosed in the Tax Audit Report and the petitioner's ITR; whereupon an assessment order was passed under section 143(3) of the Act.

6. Accordingly, issue notice.

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

6.2. A counter-affidavit will be filed within four weeks from today. Rejoinder thereto, if any, will be filed before the next date of hearing.

7. List the matter on 07.09.2022.

8. In the meanwhile, there shall be a stay on the reassessment proceedings initiated, vide the impugned notice dated 30.03.2021."

2. As would be evident, we had granted four weeks to respondent/revenue to file a counter-affidavit in the matter.

2.1 On the next returnable date i.e., 07.09.2022, once again further four weeks were granted to respondent/revenue to file counter-affidavit. On that date, interim order dated 04.02.2022 was made absolute during the pendency of the writ petition and accordingly, interlocutory applications were disposed of.

3. It is in this backdrop that the matter has been listed before the court today i.e., 27.03.2023. To be noted, there is a typographical error in the order dated 07.09.2022, as it indicates that the returnable date is 25.03.2022 instead of 27.03.2023.

4. The record shows that the counter-affidavit despite opportunities being given in that behalf.

5. According to us, this appears to be a case of change in opinion. Furthermore, the issue which arises for consideration in the instant Assessment Year (AY) in issue i.e., AY 2017-18, also arose for consideration in AY 2014-15, 2015-16 and 2016-17.

6. Insofar as writ action for AY 2014-15 is concerned, i.e.,

W.P.(C)1922/2022, the same has been disposed of by us today. The notice and order impugned in the said writ petition has been set aside with liberty to the Assessing Officer (AO) to take next steps in the matter, *albeit* as per law.

7. As is noted therein, for AY 2015-16 and 2016-17, the reassessment proceedings were sought to be triggered, which after receiving an explanation from the petitioner, were dropped *via* two separate orders dated 15.03.2022.

7.1 Thus, for the foregoing reasons, we are of the view that the impugned notice dated 30.03.2021 and the impugned order dated 29.12.2021 deserve to be set aside. It is ordered accordingly.

8. As in the other case i.e., W.P.(C)1922/2022, liberty is given to the AO to take next steps in the matter. In case reassessment proceedings are sought to be triggered once again, the AO will have regard to the fact that *qua* the very same issue which is raised in the AY in issue, reassessment proceedings were dropped *vis-a-vis* AYs 2015-16 and 2016-17.

9. The decision with regard to recommencement of the assessment/reassessment proceedings will be taken by the AO within four weeks from the receipt of a copy of this judgment. In such an eventuality, the petitioner will be given liberty to file fresh objections and a hearing in the matter. Till such time, the interim order passed in the writ petition will continue to obtain.

10. Writ petition is disposed of in the aforesaid terms. Registry will scan

and upload the orders dated 15.03.2022 passed *qua* AYs 2015-16 and 2016-17 so that it remains embedded in the case file.

**(RAJIV SHAKDHER)
JUDGE**

**(TARA VITASTA GANJU)
JUDGE**

MARCH 27, 2023 / r

