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

% *Decision delivered on: 24.02.2023*

+ **W.P.(C) 2338/2023 & CM No.8873/2023**

ARORA BROTHERS THROUGH KRISHAN LAL ARORA,
ERSTWHILE PARTNER Petitioner

Through: Mr Bhushan Kapur and Mr Y.K.
Kapur, Advs.

versus

INCOME TAX OFFICER WARD NO.
47 (1) AND ANR Respondents

Through: Mr Shailendera Singh, Sr. Standing
Counsel with Mr Viplav Acharya, Jr
Standing Counsel and Mr Akash
Saxena, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE VIKAS MAHAJAN

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

RAJIV SHAKDHER, J. (ORAL):

CM No.8873/2023

1. Allowed, subject to just exceptions.

W.P.(C) 2338/2023

2. Issue notice.

2.1. Mr Shailendera Singh accepts notice on behalf of the respondents/revenue.

3. Mr Singh says that in view of the directions that we intend to pass, no counter-affidavit is required to be filed. Therefore, with the consent of

learned counsel for the parties, the writ petition is taken up for hearing and final disposal at this stage itself.

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

“(A) Issue a writ of and/or order and or directions in the nature of Mandamus, Certiorari, Prohibition, Quo warranto or any other appropriate writ, order or direction quashing impugned letter or the so called assessment order dated 31-03-2022 {DIN ITBA/COM/F/17/2021-22/1042381094(1)} for AY 2016-17 and as a consequence the Demand Notice issued.

(B) Issue a writ of and/or order and/or direction in the nature of Prohibition commanding Respondents to forebear from giving effect to and/or taking any step whatsoever pursuant to and/or in furtherance of the said purported letter or assessment order.

(C) Issue directions, in the alternative to the Respondents to provide effective facility for filing of appeal by the Writ Petitioner against the impugned letter or so called assessment order dated 31-03-2022 {DIN ITBA/COM/F/17/2021-22/1042381094(1)} for A Y 2016-17.”

5. A perusal of the prayers would show, quite clearly, that the petitioner seeks to challenge, by way of the instant writ petition, the assessment order dated 31.03.2022 passed *vis-à-vis* Assessment Year (AY) 2016-17.

6. Mr Bhushan Kapur, who appears on behalf of the petitioner, says that there is a misalignment between the show cause notice and the assessment order.

6.1. In the show cause notice, the petitioner was called upon to respond *qua* a bill of entry wherein the assessable value of imports is recorded as Rs.6,37,26,449/-.

6.2. It is pointed out by Mr Kapur that in the impugned assessment order, this figure has shot up to Rs.63,72,26,449/-.

6.3. Mr Kapur says that it is almost ten (10) times the figure which was recorded in the show cause notice.

7. Besides this, it is Mr Kapur’s contention that a detailed response was

given to the show cause notice dated 14.03.2022 served on the petitioner.

7.1. In the reply, Mr Kapur says that the petitioner informed the Assessing Officer (AO) that in 1993, a partnership firm was formed under the name Arora Brothers. This partnership firm comprised two partners, i.e., Mr Krishan Lal Arora and Mr Lekh Raj Arora.

7.2. The reply also adverted to the fact that the partnership firm was dissolved on 31.07.1999 and thereafter, the business of the said partnership firm was taken over by the petitioner, i.e., Mr Krishan Lal Arora.

8. It is, however, conceded that the proprietorship firm was run under the name which was given to the partnership firm, i.e., Arora Brothers.

9. Mr Kapur goes on to state that since July 1999, the business, which was earlier carried on by the aforementioned partnership firm, was run by the proprietorship concern.

10. It is also Mr Kapur's contention that the imports made *via* the subject bill of entries, which bear an assessable value of Rs.6,37,26,449/- was taken into account by the proprietor i.e., Mr Krishan Lal Arora, while filing his tax returns.

11. In sum, the contention is that the import and the corresponding sales which were carried out were duly disclosed not only in income tax returns (ITR) but also in the sales tax/DVAT/CST/GST returns and, thus, offered for levy of all applicable taxes and duties.

12. However, Mr Kapur does concede (something which the AO also noted in the assessment order) that the proprietorship concern and its proprietor Mr Krishan Lal Arora were using the Import Export Code (IEC) of the erstwhile partnership firm up until 2017.

13. We may note that the petitioner has asserted that contrary to what has

been noted, the petitioner has not used the PAN of the partnership concern.

14. Mr Shailendera Singh says that a perusal of the impugned assessment order would show that the AO had grave doubts as to whether or not the partnership firm has actually been dissolved.

15. Having heard learned counsel for the parties, according to us, the following aspects come to the fore.

(i) First, as to the amount which remains unexplained according to the respondents/revenue; is it the amount which was mentioned in the show cause notice dated 14.03.2022 or the amount which is now part of the impugned assessment order.

(ii) Second, as to whether or not the correct amount has been offered for tax, as contended by the petitioner.

(iii) Third, as to whether the partnership firm, which runs under the name and style as the proprietorship concern, in fact, stood dissolved on 31.07.1999, as claimed by the petitioner.

16. Given this position, we dispose of the writ petition giving leave to the petitioner to approach the AO for correction/rectification of the impugned assessment order. For this purpose, three (3) weeks are granted to the petitioner.

16.1 The AO, if approached, will pass a suitable order.

16.2. Once the AO receives the representation/application in that behalf, he will pass a speaking order within the next eight (8) weeks.

16.3. The AO will also accord personal hearing to the petitioner and/or his authorized representative. For this purpose, the AO will ensure that a notice is issued to the petitioner which would indicate the date and time of the hearing.

16.4. Needless to add, the petitioner will submit the documents/material in support of his case.

17. We make it clear that the observations made hereinabove will not impact the decision that the AO will take, once, the representation/application is filed by the petitioner.

18. Parties will act, based on a digitally signed copy of the order passed today.

RAJIV SHAKDHER, J

VIKAS MAHAJAN, J

FEBRUARY 24, 2023

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