$~37

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

% *Decision delivered on: 26.07.2023*

\+ **W.P.(C) 9769/2023 & CM No.37491/2023**

TIMEX GROUP USA INC ..... Petitioner

Through: Mr Rohit Garg, Mr Aayush Nagpal and Mr Jaskaran Saluja, Advs.

versus

THE DEPUTY COMMISSIONER OF INCOME TAX, INTERNATIONAL TAXATION CIRCLE 3(1)(1), NEW DELHI & ANR. ..... Respondents

Through: Mr Aseem Chawla, Sr Standing Counsel with Ms Pratishtha Choudhary and Mr Aditya Gupta, Advs.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MR. JUSTICE GIRISH KATHPALIA
[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

1. Issue notice.

1.1 Mr Aseem Chawla, learned senior standing counsel, accepts notice on behalf of the respondents/revenue.

2. Given the directions that we propose to issue, Mr Chawla says that he does not wish to file a counter-affidavit and he will argue the matter based on the record presently available with the court.

2.1 Therefore, with the consent of learned counsels for the parties, the writ petition is taken up for hearing and final disposal, at this stage itself.

Signature Not Verified
Digitally Signed By:ATUL JAIN
Signing Date:02.08.2023 14:34:26

3. This writ petition concerns Assessment Year (AY) 2019-20.

4. *Via* this writ petition, the petitioner seeks to assail the following orders and notices:

(i) Notice dated 31.03.2023 issued under Section 148A(b) of the Income Tax Act, 1961 [in short, "Act"].

(ii) Order dated 01.05.2023 passed under Section 148A(d) of the Act.

(iii) Consequential notice dated 01.05.2023 issued under Section 148 of the Ac.

(iv) Quash proceedings initiated pursuant to the notice dated 01.05.2023 issued under Section 148 of the Act.

5. The principal allegation against the petitioner is that it has received foreign remittances amounting to Rs.9,12,50,136/- from an Indian company going by the name Timex Group India Ltd.

6. It is the respondents/revenue's case that the remittance is in the nature of consultancy services, and hence, is taxable under Section 9(1)(vii) of the Act. In other words, the remittance has been treated as fee for technical services by the respondents/revenue.

7. The record shows that the petitioner is a tax resident of USA. The notice dated 31.03.2023, which was issued under Section 148A(b) of the Act was served on the petitioner at its USA address.

7.1 *Via* this notice, the petitioner was directed to submit a response on or before 17.04.2023, electronically, at www.incometax.gov.in.

8. It appears that the petitioner, *via* letter dated 17.04.2023 sent through its authorized representative, sought accommodation.

8.1 This letter was followed by an e-mail dated 18.04.2023 whereby the request for accommodation was reiterated and an opportunity was sought for

Signature Not Verified
Digitally Signed By:ATUL JAIN
Signing Date:02.08.2023 14:34:26

being granted hearing in the matter.

9. The solicitor firm engaged by the petitioner followed the e-mail with a letter dated 26.04.2023, wherein the details of contact persons, i.e., lawyers, was set forth for engaging in future correspondence concerning the petitioner.

9.1. A power of attorney which was duly apostilled was, it appears, submitted to the Assessing Officer (AO), *inter alia*, in the name of persons who were referred to in the letter dated 26.04.2023.

10. It appears that since there was no response, on 09.05.2023, a letter dated 08.05.2023 was submitted by the petitioner's advocates to the AO, which, *inter alia*, adverted to the defences that the petitioner sought to rely upon qua the impugned reassessment proceedings that were sought to be initiated against it.

10.1 There was further correspondence on the issue in June 2023, which was initiated by the petitioner. However, what the petitioner was unaware of, was that on 01.05.2023, the impugned order was passed under Section 148A(d) of the Act.

10.2 This order, evidently, was communicated to the petitioner by respondent no.1 *via* e-mail dated 23.06.2023. As a matter of fact, this e-mail not only furnished a copy of the order dated 01.05.2023 passed under Section 148A(d) of the Act, but also the notice of even date, i.e., 01.05.2023 issued under Section 148 of the Act.

11. Mr Chawla cannot but accept that a request for personal hearing was made much prior to the date when the impugned order was passed. The AO, clearly, did not pay any heed to it.

11.1 Furthermore, as noticed hereinabove, a reply, on merits, was filed by

Signature Not Verified
Digitally Signed By:ATUL JAIN
Signing Date:02.08.2023 14:34:26

the petitioner, although after the impugned order had already been passed by the AO.

12. There is no dispute about the fact that the petitioner has not filed a Return of Income (ROI) for the AY in issue.

12.1 As to whether such an obligation is cast on the petitioner, in the facts and circumstances obtaining in the instant case, is a matter which also needs to be inquired into by the AO. The provisions of Section 139 and Section 115A would have to be interpreted by the AO.

12.2 That said, what the AO may also have to rule on is that even if ROI was not filed, will that, by itself, lead to a conclusion that remittances received by the petitioner were income chargeable to tax which had escaped assessment under the Act.

13. Thus, for the foregoing reasons, we are of the view that the best way forward would be to set aside the impugned order dated 01.05.2023 passed under Section 148A(d) and consequent notice of even date, i.e., 01.05.2023 issued under Section 148 of the Act, with liberty to the AO to pass a fresh order after giving due opportunity to the petitioner.

13.1 It is ordered accordingly.

14. The AO will issue a notice to the petitioner indicating the date and time of the hearing.

14.1 In case the petitioner or its authorized representative seeks an opportunity to file written submissions, the AO will accord time for the said purpose.

14.2 Needless to state, the AO will pass a speaking order which will deal with all contentions raised by the petitioner. A copy of the order will be furnished to the petitioner, no sooner it is passed.

Signature Not Verified
Digitally Signed By:ATUL JAIN
Signing Date:02.08.2023 14:34:26

15. The writ petition is disposed of, in the aforesaid terms.

16. Consequently, the pending interlocutory application shall stand closed.

17. Parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

JULY 26, 2023
aj

Signature Not Verified
Digitally Signed By:ATUL JAIN
Signing Date:02.08.2023 14:34:26