



2023:DHC:8672-DB



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

+ **W.P.(C) 15322/2023 & CM APPL.61469/2023**

PEPSICO INDIA HOLDINGS PRIVATE LIMITED Petitioner

Through: Mr.Deepak Chopra, Advocate with
Mr.Anmol Anand and Ms.Priya
Tandon, Advocates.

versus

**ASSESSMENT UNIT INCOME TAX DEPARTMENT NATIONAL
FACELESS ASSESSMENT CENTRE & ORS.** Respondents

Through: Mr.Aseem Chawla, Sr.Standing
Counsel with Ms.Pratishtha
Chaudhary, Ms.Nivedita and
Mr.Aditya Gupta, Advocates.

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Date of Decision : 01st December, 2023

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MINI PUSHKARNA

JUDGMENT

MANMOHAN, ACJ : (ORAL)

1. Present writ petition has been filed challenging the order dated 21st November, 2023 passed by the Respondent No.1 under Section 143(3) read with Section 144C(4) of the Income Tax Act, 1961 [hereinafter referred to as 'the Act'] for Assessment Year 2020-21 as well as the computation sheet and demand notice issued under Section 156 of the Act. Petitioner also challenges the notice dated 21st November, 2023 issued under Section 274 read with Section 270A of the Act initiating penalty proceedings against the

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Petitioner. Petitioner also seeks directions to the Respondent No.3-Dispute Resolution Panel ('DRP'), to decide the objections dated 20th October, 2023 in accordance with law.

2. Learned counsel for the Petitioner states that though the Petitioner had preferred its objections against the draft assessment order dated 26th September, 2023 before the Respondent No.3-DRP within limitation as provided under Section 144C(2)(b)(i) read with Section 144B(1)(xxiv)(b)(I) of the Act, yet the Petitioner inadvertently failed to intimate the Respondent No.1-Assessing Officer regarding the objections in terms of Section 144C(2)(b)(ii) of the Act. He states that due to the inadvertent lapse on behalf of the Petitioner, Respondent No.1- Assessing Officer passed the impugned final assessment order dated 21st November, 2023, thereby closing the assessment for the year under consideration.

3. Learned counsel for the Petitioner states that since the Petitioner had exercised its statutory remedy of filing its objections before the Respondent No.3-DRP, the impugned final assessment order should not have been passed by the Respondent No. 1- Assessing Officer before the Respondent No. 3-DRP issued its directions for framing of the assessment.

4. In support of his submission, he relies on the judgment dated 19th July, 2023 passed by the High Court of Karnataka in *Open Silicon Research Private limited v. The Assessment Unit [W.P. No. 14541 of 2023]* and the Bombay High Court in *Sulzer Pumps India Private Limited v. Dy. Commissioner of Income Tax [W.P.(L) No. 15811/2021]* wherein under identical facts, the Court had set aside the final assessment order and consequent notices. He also relies on the decision of this Court in *SRF Ltd. vs. NFAC, [2021] 281 Taxman 574 (Delhi High Court), Anand Nvh*



Products (P.) Ltd. vs. NFAC, [2021] 282 Taxman 485 (Delhi High Court) and *Fiberhome India (P.) Ltd. Vs. National E-Assessment Centre, Additional/Joint/Deputy Assistant Commissioner of Income-tax/Income-tax Officer, (2022) 132 taxmann.com 118 (Delhi)* wherein this Court set aside the final assessment order and the consequent notices/ computations that were passed without waiting for the directions issued by the DRP as per the mandate of Section 144C of the Act.

5. Issue Notice. Mr.Aseem Chawla, Senior Standing Counsel, accepts notice on behalf of the Respondents.

6. He submits that under Section 144C(2)(b)(ii), the Petitioner on receipt of the draft assessment order was statutorily required to file its objections before the Assessing Officer in addition to the DRP. He further submits that under Section 144C(3)(b) the Assessing Officer was obligated to complete the assessment on the basis of the draft assessment order if no objections were received within the time period specified under Section 144C(2) i.e. within thirty days of the receipt of the draft order. He states that the Assessing Officer was well within his right to pass the impugned assessment order dated 21st November, 2023 and he cannot be faulted for finalising the assessment in accordance with the prescribed procedure.

7. Having heard learned counsel for the parties, this Court is of the view that the issue at hand is no longer *res integra* as it has been decided by the Bombay High Court in *Sulzer Pumps* (supra) wherein it has been held as under:-

“6. In our view since petitioner had already filed a reference raising his objections to the DRP and Section 144C (4) of the Act requires the Assessing Officer to pass the final order including the view expressed by the DRP, we will be justified in setting aside the order of the Assessing Officer dated 28th June, 2021 which is impugned in this



petition. We would also observe that the Assessing Officer cannot be faulted for passing the impugned order. At the same time, the Assessing Officer will also have benefit of considering the views of DRP while passing a fresh Assessment Order.”

8. This Court is in agreement with the view expressed by the Bombay High Court in the aforesaid decision. Once the objections have been filed by the assessee against a draft assessment order within the time limit prescribed under Section 144C(2)(b), the rest of the procedure should be followed as prescribed and the final assessment order ought to be passed by the Assessing Officer in accordance with the directions issued by the DRP.

9. This Court is further of the view that no prejudice will be caused to the Respondent-Department if the present petition is allowed and the impugned assessment order is set aside as Respondent-Department would be well within its rights to pass a fresh assessment order post the receipt of direction from the Respondent No. 3-DRP.

10. Accordingly the impugned assessment order dated 21st November, 2023, the computation sheet as well as all the subsequent notices are set aside and the writ petition is allowed.

ACTING CHIEF JUSTICE

MINI PUSHKARNA, J

DECEMBER 1, 2023/TS