

HC: Sets aside assessment-order passed sans DRP's directions; Cites CBDT extension Circular

Aug 09, 2021

Anand Nvh Products Private Limited [TS-636-HC-2021(DEL)]

Conclusion

Delhi HC, in writ petition, sets aside the final assessment order for AY 2017-18 passed without waiting for DRP's and restores the matter back to DRP; Assessee-Petitioner submitted that the objections before the DRP were filed on May 5, 2021 against the draft assessment order dated Apr 6, 2021 i.e., within the prescribed 30 days time period whereas the Revenue passed the assessment order on May 15, 2021 without even waiting for DRP's directions; Assessee also contended that the assessment order was passed with undue haste since CBDT vide [Circular No. 8 of 2021 dt. Apr 30, 2021](#), had extended the timeline for filing of objections before the DRP until May 31, 2021; Revenue's Counsel submitted that he had not received any instruction in the present case, HC remarks that the advance copy of the writ petition had been served upon the Revenue and thus, it has no other option but to proceed with the matter, however, extends liberty to seek variation/modification of the Court's order if any facts are found to have been suppressed or misstated by the Assessee; HC finds that the assessment order was passed in violation of mandatory procedure prescribed u/s 144C as well as the CBDT Circular; Thus, HC sets aside the assessment order, notice of demand u/s 156 and notice for initiating penalty proceedings u/s 271AAC(1).:HC DEL

Decision Summary

The ruling was delivered by the Division Bench of the High Court of Delhi comprising Justice Manmohan and Justice Navin Chawla.

Advocates Mukesh Butani, Shreyash Shah, Shankey Agrawal and Karan Dhanuka appeared for the Assessee while the Revenue was represented by Advocates Sanjay Kumar and Easha Kadiyan.

To read and download the Ruling, subscribers of Taxsutra's Realtime portal may [click here](#) and subscribers of Taxsutra's Transfer Pricing portal may [click here](#).

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

+ **W.P.(C) 7936/2021**

ANAND NVH PRODUCTS PRIVATE LIMITED Petitioner

Through: **Mr. Shreyash Shah, Advocate with
Mr. Mukesh Butani, Mr. Shankey
Agrawal and Mr. Karan Dhanuka,
Advocates.**

versus

**NATIONAL E ASSESSMENT CENTRE DELHI
& ANR.**

..... Respondents

Through.: **Mr. Sanjay Kumar, Advocate with
Ms. Easha Kadiyan, Advocate.**

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Date of Decision: 06th August, 2021

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

J U D G M E N T

MANMOHAN, J: (Oral)

The petition has been heard by way of video conferencing.

CM Appl. 24646/2021 (for exemption)

Allowed, subject to just exceptions.

Accordingly, present application stands disposed of.

Signature Not Verified

Digitally Signed By: ASWANT
SINGH RAWAT
Signing Date: 08/08/2021
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W.P.(C) 7936/2021 & CM APPLs. 24645-646/2021

1. Present writ petition has been filed challenging the Assessment Order dated 15th May, 2021, notice of demand issued under Section 156 and notice for initiating penalty proceeding under section 271AAC(1) of the Income Tax Act, 1961 [‘the Act’] passed by Respondent No. 1 under Section 143(3) read with Section 144C for the assessment year 2017-18 and restoring the proceedings at the level of Dispute Resolution Panel (‘DRP’).
2. Learned counsel for the Petitioner states that Respondent No.1 erred in passing the impugned Final Assessment Order on 15th May 2021, without waiting for the decision of the DRP. He states that the petitioner had filed objections before the DRP on 5th May, 2021 against the Draft Assessment Order dated 6th April 2021 i.e., within the prescribed thirty-day time period from the date of the Draft Assessment Order as per Section 144C(2) of the Act. He states that the impugned Assessment Order is in blatant violation of the mandatory procedure prescribed in Section 144C of the Act. He emphasises that Respondent No. 1 acted in undue haste in passing the Final Assessment Order on 15th May 2021, even though the Ministry of Finance [through Central Board of Direct Taxes (CBDT)], vide Circular No. 8 of 2021 dated 30th April 2021, had extended the timeline for filing of objections before the DRP until 31st May 2021. He contends that the action of Respondent No. 1 has resulted in grave and serious prejudice to the Petitioner inasmuch as demand of INR 58,72,510/- (Rupees Fifty Eight Lakhs Seventy Two Thousand Five Hundred and Ten Only) has been raised.
3. Issue notice. Mr. Sanjay Kumar, Advocate, accepts notice on behalf of the respondents. He states that he has no instructions in the present case.

Since an advance copy of the present writ petition had been served upon the petitioner, this Court has no other option but to proceed with the matter. However, the respondents are given liberty to seek variation/modification of the order in the event facts have been suppressed from this Court or facts have been mis-stated by the petitioner.

4. Having perused the paperbook, this Court finds that the Assessment Order has been passed in violation of mandatory procedure prescribed under Section 144C of the Act as well as the aforementioned CBDT Circular inasmuch as without waiting for the decision of the DRP, Respondent No. 1 has passed the final Assessment Order.

5. Keeping in view the aforesaid, the final Assessment Order dated 15th May, 2021, notice of demand issued under Section 156 and notice for initiating penalty proceedings under Section 271AAC(1) of the Act passed by Respondent No. 1 under Section 143(3) read with Section 144C for the assessment year 2017-18 are set aside and the proceeding is restored at the level of the DRP. With the aforesaid direction, the present writ petition along with pending applications stand disposed of.

6. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

MANMOHAN, J

NAVIN CHAWLA, J

AUGUST 6, 2021
TS