

Malaysia Securities Private Limited vs National E-Assessment Centre, Delhi on 3 June, 2021

Author: Rajiv Shakdher

Bench: Rajiv Shakdher, Talwant Singh

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 5765/2021

MALAYSIA SECURITIES PRIVATE LIMITED

Through: Mr. Salil Kapoor with Ms. Ana
Kapoor, Advs.

versus

NATIONAL E-ASSESSMENT CENTRE, DELHI

Through: Mr. Udit Sharma, Adv. for Ms.
Vibhooti Malhotra, Sr. Standi
Counsel for revenue.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE TALWANT SINGH

ORDER

% 03.06.2021 [Court hearing convened via video-conferencing on account of COVID-19]

1. The prayer made in the captioned application is to grant exemption from filing the requisite court-fee and certified copies/true typed copies of the annexures as also attested affidavits along with the present writ petition. The captioned application is allowed, subject to the petitioner filing duly attested affidavits and depositing the requisite court-fee, within three days of the resumption of the normal and usual work pattern by this court. W.P.(C) No.5765/2021 & CM No.18091/2021[Application filed on behalf of the petitioner for interim relief]

2. Mr. Salil Kapoor, who appears on behalf of the petitioner, says that the principal grievance qua the impugned assessment order dated 20.04.2021, concerning the assessment year 2018-19, is that the said order has gone beyond parameters for scrutiny set up while issuing notice under Section 143(2) of the Income Tax Act, 1961 (in short „the Act).

2.1. On being queried, Mr. Kapoor, fairly conceded that the aspect, qua which inquiry has been enlarged, was referred to in the show cause notice- cum-draft assessment order dated 09.04.2021, and in the response/objections filed qua the same, the issue concerning the Assessing Officer s („AO) jurisdiction was not raised.

2.2. The aspect on which the petitioner is presently aggrieved is referred to in paragraph 8 of the impugned assessment order. For the sake of convenience, the said paragraph is extracted hereafter:

"8. Accordingly, the objections of the assessee, to the draft assessment order have been duly addressed and since the transactions, are not genuine either being mere fund flows & Oswal Agro Mills Ltd- a public limited entity merely serves as a conduit. The source of payments of Rs.45,75,00,000/- to Sarda Mines Pvt. Ltd. and Rs.37,79,49,062/- to Oswal Agro Mills Limited is not explained." Accordingly amount is added back u/s section 69 of the Income Tax Act, 1961. On the said amount, tax is to be charged as per section 115BBE of the Act. Since the assessee has made unexplained investment thereby liable to penalty u/s. 271AAC of the Income Tax Act, 1961 and is being initiated separately.

(Addition: 83,54,49,062/-) Total income of the assessee is computed as below- Loss as shown by the assessee in ITR- (-) Rs.97,92,156 Add:

(i)	Disallowance on account of bad debt as discussed above	Rs.53,43,0
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(ii) Disallowance of income tax debited in P/L A/c as discussed above Rs.2,75,560

(iii) Addition made on account of unexplained Investment as discussed above Rs.83,54,49,062 Rs.84,10,67,713 Total Income-

Rs.83,12,75,557 Or Rs.83,12,75,560."

2.3. That being said, Mr. Kapoor says that as per the Central Board of Direct Taxes s (in short „CBDT) own circulars, in case the AO wishes to expand the scope of the "limited scrutiny", the A.O. would have to seek the approval of the Principal Commissioner, Income Tax (in short „PCIT). Therefore, the argument advanced on behalf of the petitioner by Mr. Kapoor is that, notwithstanding the fact that the AO has made a reference to an aspect, which was not part of limited scrutiny notice issued under Section 143(2) of the Act, in the show notice cum draft assessment order, the A.O. lacked jurisdiction to deal with the aspect of the matter as the A.O. did not have the approval of the PCIT. For this purpose, reliance has been placed by Mr. Kapoor on CBDT instruction dated 30.11.2017 (See Annexure P-5), which is appended on page 78 of the paper book. To be noted, in paragraph 3 of the said instruction issued by the CBDT, there is reference to other CBDT s instructions, which are dated 26.09.2014, 29.12.2015 and 14.07.2016.

2.4. We are informed by Mr. Kapoor that, a similar issue is being examined by this Court in W.P.(C) No.5318/2021.

3. Accordingly, issue notice in the captioned writ petition and interlocutory application.

3.1 Mr. Udit Sharma accepts service for Ms. Vibhooti Malhotra, senior standing counsel, who appears on behalf of the respondent/revenue.

3.2. Counter-affidavit will be filed within five weeks from today. Rejoinder thereto, if any, will be filed before the next date of hearing.

4. In the meanwhile, there shall be a stay on the operation of the impugned assessment order, dated 20.04.2021.

5. List the matter on 27.07.2021.

RAJIV SHAKDHER, J TALWANT SINGH, J JUNE 3, 2021/pmc Click here to check corrigendum, if any