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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision : 09.12.2024

+ W.P.(C) 11636/2024, CM APPL. 48369/2024 (STAY)

JACKSON SQUARE AVIATION IRELAND
LIMITED

.....Petitioner

Through: Dr. Shashwat Bajpai, Advocate.

versus

ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE INT
TAX 2(1)(2) & ANR

.....Respondent

Through: Mr. Ruchir Bhatia, SSC with Mr.
Anant Mann, JSC, Mr. Abhishek
Anand, Advocates.**CORAM:****HON'BLE THE ACTING CHIEF JUSTICE****HON'BLE MR. JUSTICE TUSHAR RAO GEDELA****VIBHU BAKHRU, J. (ORAL)**

1. The petitioner, Jackson Square Aviation Ireland Limited (hereafter *Assessee*), has filed the present petition, *inter alia*, impugning the Final Assessment Order dated 20.05.2024 (hereafter *the impugned order*) passed under Section 143(3) read with 144C(3) of the Income Tax Act, 1961 (hereafter *the Act*), on it being without jurisdiction as the same was passed without waiting for the decision of Dispute Resolution Panel (hereafter *DRP*).

2. The Assessee had filed its Return of Income (hereafter *RoI*) for the assessment year (AY) 2022-23 on 25.10.2022. The case of the Assessee was selected for scrutiny. The Assessing Officer (hereafter *AO*) issued a



show cause notice under Section 148A(b) of the Act calling upon the Assessee to show cause as to why the receipts should not be taxed as interest income during the year under consideration (AY 2022–23). The Assessee claims to have submitted its response to the said show cause notice on 27.03.2023. The AO subsequently passed the Draft Assessment Order proposing an addition of Rs.499,99,19,251/- on account of treating lease rentals received by the Assessee from leasing of aircraft as interest income and proposed penalty as well.

3. Aggrieved by the Draft Assessment Order dated 31.03.2024 passed under Section 144C(1) of the Act, the Assessee filed its objections in Form No.35A on 29.04.2024 with the DRP. The Assessee submits that it is an eligible assessee in terms of Section 144C(15)(b)(i) of the Act and that the objections were duly filed within time in terms of Section 144C(2)(b) of the Act before the DRP.

4. Notwithstanding that the Assessee's objections dated 29.04.2024 were pending before the DRP, the AO passed the impugned Final Assessment Order dated 20.05.2024 re-computing the income of the Assessee at Rs.499,99,19,251/- on being satisfied that the Assessee had underreported its income. According to the Assessee, the AO had no jurisdiction to pass the impugned Final Assessment Order dated 20.05.2024 keeping in view the pendency of the objections before the DRP. The Assessee contends that the AO could not have extinguished the right of the Assessee to get its objections disposed of by the DRP by passing the impugned Final Assessment Order. The Assessee also contends that no real time alert was sent to its registered e-mail Id.

5. The Assessee relies upon the judgments of this Court in *Fiberhome*



India Private Limited vs. National E-Assessment Centre in W.P.(C) 11609 of 2021 dated 15.12.2021, ***Pepsico India Holding (P.) Ltd. vs. Assessment Unit Income-Tax Department National Faceless Assessment Centre & Ors.*** in W.P.(C) No. 15322 of 2023 dated 01.12.2023 and ***De Diamond Electric India Private Limited vs. Assessment Unit, National Faceless Assessment Centre & Anr.*** in W.P.(C) 15982 of 2023 dated 12.12.2023, whereby in identical situation this Court had remitted the matter to the DRP for consideration as per procedure laid out in terms of Section 144(C) of the Act. According to the Assessee, it is no more *res integra* that the respondent department is mandated to act in accordance with the procedure stipulated in Section 144(C) of the Act and await the decision of the DRP before passing the Final Assessment Order, even in cases where the AO has not been notified by the Assessee, as long as the objections before the DRP have been submitted within time.

6. Learned counsel appearing for the Revenue submits that a notice dated 18.04.2024 was communicated to the Assessee informing it that a Draft Assessment Order under Section 144(C)(1) of the Act was passed in its case. He also contends that notwithstanding the aforesaid communication, an e-mail dated 09.05.2024 regarding the passing of Draft Assessment Order was also issued.

7. In rejoinder, Dr. Shashwat Bajpai, learned counsel for the Assessee, vehemently disputes the aforesaid submissions of the learned counsel appearing for the Revenue. He contends that the lack of information of the pendency of the objections before the DRP cannot be a sustainable objection in view of the ratio laid down by the aforesaid judgments.

8. After hearing the arguments, this Court is of the opinion that it is not



necessary to examine this controversy as it is an admitted position that, notwithstanding the lack of information with the AO, if an objection has been filed and is pending before the DRP, the Assessment Order passed in ignorance of the said objections, is required to be set-aside.

9. In view of the above, the present petition is allowed. The impugned Final Assessment Order dated 20.05.2024 passed by the AO in respect of AY 2022- 23 is set-aside.

10. The petition is accordingly disposed of in the aforesaid terms alongwith pending applications.

ACTING CHIEF JUSTICE, J

TUSHAR RAO GEDELA, J

DECEMBER 09, 2024

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Click here to check corrigendum, if any