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

+ W.P.(C) 5912/2021

THREE C HOMES PVT. LTD.

..... Petitioner

Through

Mr. Rishabh Jain, Advocate

versus

ASSISTANT COMMISSIONER OF INCOME

TAX CENTRAL CIRCLE 6, NEW DELHI Respondent

Through

Mr. Sunil Agarwal, Senior
Standing Counsel

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Date of Decision: 16th July, 2021.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

J U D G M E N T

MANMOHAN, J: (Oral)

1. The hearing has been conducted through video conferencing.
2. Present writ petition has been filed challenging the assessment order dated 01st June 2021. Petitioner has also sought sufficient time in future to file a reply after considering the lockdown position in U.P. and NCT of Delhi as well as the fact that the Petitioner-Company is represented by a Resolution Professional who is an independent professional and is dependent upon the past employees of the Petitioner-Company to file its response.

3. On the first date of hearing, i.e. 11th June, 2021, learned counsel for the Petitioner had stated that the Petitioner on 31st May 2021 at around 02:00 p.m. had asked for an adjournment and extension of time to submit his reply citing the reason that the Resolution Professional of the Petitioner was unable to access the records of the Petitioner-Company due to various lockdown restrictions imposed by the State of Uttar Pradesh.

4. Learned counsel for the petitioner had stated that on the same day i.e. 31st May 2021 at around 04:00 p.m., the Respondent had granted an adjournment by way of an email (Annexure P-4) till 14th June 2021. He had, however, stated that on 02nd June 2021 the petitioner received impugned Assessment Order dated 01st June 2021. The said email dated 31st May, 2021 at Annexure P-4 is reproduced hereinbelow:-

*“DONOTREPLY@incometaxindiaefiling.gov.in
<DONOTREPLY@incometaxindiaefiling.gov.in>
To: 3chomes.cirp@gmail.com*

*Dear Taxpayer,
Greetings from Income-tax department.
Response due date for submission to notice 142(1) is extended up
to null*

*“Your taxes build a Nation”
Income-tax department”*

5. Learned counsel for the petitioner had emphasised that the assessment order was bad in law because on 31st May 2021, the adjournment sought by the Resolution Professional of the petitioner company had been granted and the matter had been adjourned for 14th June 2021. He had stated that after granting the adjournment there was no occasion for the Respondent to pass the impugned Assessment Order dated 01st June 2021.

6. However, on the first date of hearing i.e. 11th June, 2021, learned counsel for respondent had vehemently opposed the petition by contending that the petitioner had approached this Court with unclean hands. He had stated that the alleged email dated 31st May, 2021 (Annexure P-4), which was the basis for filing the writ petition had not originated from the office of the respondent and therefore, had prayed that the writ petition be dismissed.

7. In view of the serious objection raised by the respondent regarding the authenticity of the email dated 31st May, 2021 (Annexure P-4), the petitioner was granted two weeks' time to file an affidavit under Section 65B of the Evidence Act. The relevant portion of the said order dated 11th June, 2021 is reproduced hereinbelow:-

“5. On the other hand, Mr. Sunil Aggarwal, who appears on behalf of the respondents on advance notice, vehemently opposes the petition by contending that the petitioner has approached this Court with unclean hands. He submits that the alleged communication dated 31st May, 2021 (“Annexure P-4” to the present petition) which is the basis for filing of the present petition, has not originated from the office of the respondent and therefore, prays that the writ petition be dismissed on this ground alone.

6. In view of the serious objection raised by the respondent regarding the authenticity of the document annexed as “Annexure P-4”, the petitioner is granted two weeks' time to file an additional affidavit clearly stating the source of this communication, along with an appropriate affidavit under Section 65-B of the Evidence Act.”

8. In pursuance to the aforesaid order, the petitioner had filed an affidavit under Section 65B of the Evidence Act.

9. Subsequently, in the counter-affidavit dated 10th July, 2021, the authenticity of the email/communication dated 31st May, 2021 (Annexure P-4) was once again seriously disputed. It was reiterated that all communications to the petitioner by the respondent had originated from the email I.D. delhi.dcit.cen6@incometax.gov.in. The deponent of the counter affidavit even went to the extent of stating that the petitioner had prima facie committed penal offences under Sections 191, 192 and 196 of the IPC. The relevant portion of the counter affidavit is reproduced hereinbelow:-

“2. That the sheet-anchor of Petitioner's case is Annexure-P4 annexed at page 29 of the instant Petition. The Petitioner avers that said document emanated/originated from the official e-mail identity (E-mail id) of the Respondent, while the Respondent avers that the said document did not emanate/originate from official E-mail id of the Respondent. In other words, authenticity of the said document is the core dispute in the instant Petition.

3. That the said issue is captured in the Order dated 11-6-2021, when this matter first came up before a Vacation Bench of this Hon'ble Court. This Hon'ble Court observed:

xxxx xxxx xxxx xxxx

3.2. That therefore, it is the Respondent's case that the Petitioner has approached the Writ Court with unclean hands and deserves to be thrown out in limine on grounds of non-bonafide conduct. Therefore, the instant counter-affidavit is confined only to the authenticity/genuineness aspect of Annexure-P4, and not to the merits of the matter. The Respondent craves leave of this Hon'ble Court to submit additional counter-affidavit at a later date, as and when the need arises.

4. That all communications from the Respondent to the Petitioner originated from following e-mail id, which is the official e-mail id of the Respondent;
delhi.dcit.cen6@incometax.gov.in

4.1. That as per the records of Respondent, the email address provided by the Petitioner to the Respondent for communication with the Petitioner is as follows;

tax@lotusgreens.in

Copy of Return of Income filed by the Petitioner for Assessment Year ("AY") 2018-19, vide which the Petitioner has communicated its e-mail id for communication by Respondent, is annexed hereto and marked as **Annexure R-2**.

4.2. That therefore, all communications from Respondent to the Petitioner originated from delhi.dcit.cen6@incometax.gov.in and were addressed to tax@lotusgreens.in 4.3. That by way of ready reference, screen shot of communication dated 28-5-2021, being notice under section 142(1) of Income Tax Act, 1961 ("**IT Act**") from Respondent to Petitioner is annexed hereto and marked as **Annexure R-3**.

4.4. That by way of further reference, screen shot of communication dated 2-6-2021, being Assessment Order for AY 2018-19 along with Demand Notice and Computation Sheet under section 143(3) of Income Tax Act, 1961 ("**IT Act**") from Respondent to Petitioner is annexed hereto and marked as **Annexure R-4**.

4.5. That it is the claim of the Petitioner that in response to the above stated Notice dated 28-5-2021 u/s. 142(1) of the Act, the Petitioner, via the Income Tax e-filing Portal, submitted before the Respondent, an application for adjournment on 31-5-2021 requesting for 15 days' time to submit its reply to the above stated Notice u/s. 142(1) of the Act.

4.6. That it is the further claim of the Petitioner that on the same day i.e.31.05.2021 at 2:01 PM, an e-mail was received by the Petitioner from the e-mail ID DONOTREPLY@incometaxindiaefiling.gov.in.Vide the said email, the Petitioner was allegedly intimated that its 'request for adjournment for submissions against notice u/s 142(1) was successfully submitted'.

Copy of alleged e-mail dated 31-5-2021 at 2.01 PM received by the Petitioner from DONOTREPLY@incometaxindiaefiling.gov.in is annexed hereto and marked as **Annexure R-5**.

4.7. That it is the further claim of the Petitioner that on the same day i.e., 31.05.2021 at 4:01 PM, another e-mail was received by the Petitioner from the e-mail ID DONOTREPLY@incometaxindiaefiling.gov.in. Vide the said email, the Petitioner was allegedly intimated that "Response due date for submission to notice 142(1) is extended up to null."

Copy of the above-said alleged e-mail from DONOTREPLY@incometaxindiaefiling.gov.in to the Petitioner on 31.05.2021 at 4:01 PM is annexed hereto and marked as **Annexure R-6**.

4.8. That as per express admission of the Petitioner, both the abovesaid e-mails annexed at **Annexure R-5** and **Annexure R-6** were received by the Petitioner at 3chomes.cirp@gmail.com

5. That therefore, the Respondent avers that the emails originating from Respondent originated from official e-mail id of the Respondent being delhi.dcit.cen6@incometax.gov.in and were addressed to the e-mail id of Petitioner on records of Respondent being tax@lotusgreens.in.

6. That the Respondent avers that the e-mails annexed at **Annexure R-5** and **Annexure R-6** originating from DONOTREPLY@incometaxindiaefiling.gov.in and addressed to 3chomes.cirp@gmail.com did not originate from Respondent's email-id

7. That, prima facie, the Petitioner has committed offences against Public Justice within the meaning of Chapter XI of Indian Penal Code, 1860. The same may, inter alia, include:

- (i) S. 191 -Giving False Evidence
- (ii) S. 192 -Fabricating False Evidence
- (iii) S. 196-Using evidence known to be false

8. That the above sequence of facts establishes that the Petitioner has not approached this Hon'ble Court with clean hands."

10. Yesterday, during the hearing learned counsel for the petitioner had stated that the respondent was trying to create an artificial and moonshine dispute as the email dated 31st May, 2021 (Annexure P-4) had been generated from ITBA Portal/DONOTREPLY@incometaxindiafiling.gov.in which undoubtedly belongs to revenue department.

11. He had contended that ITBA Portal was in transition phase and it was full of technical glitches. He also emphasised that the fact that the adjournment had been granted as mentioned in Annexure P-4 would be apparent from the fact that the respondent-AO had issued another notice under Section 142/143 of the Income Tax Act seeking same information till 14th June, 2021. A copy of the notice issued by the respondent under Section 142(1) fixing the next date of hearing as 14th June, 2021 had been annexed as Annexure 3 to the rejoinder affidavit.

12. During the course of hearing on 15th June, 2021, this Court had pointed out that a similar email as the email dated 31st May, 2021 (Annexure P-4) had been sent to another petitioner-assessee in the case of ***Ghanshyam Das Gupta Vs. Assistant Commissioner of Income Tax, Central Circle-27, Delhi, W.P. (C) 6278/2021*** from the 'DONOTREPLY@incometaxindiaefiling.gov.in. It was stated by this Court that it cannot be a coincidence that similar emails granting adjournments to different assesseees from the Income Tax of India e-filing Portal had been forged and fabricated by different assesseees simultaneously.

13. At that stage, learned counsel for respondent had sought time to obtain instructions.

14. However today learned senior standing counsel for the respondent has reiterated the respondent's stand taken in the counter affidavit. The email handed over by learned counsel for the respondent is reproduced hereinbelow:-

“From: "delhi.dcit.cen6"<delhi.dcit.cen6@incometax.gov.in>

Date: 15 July 2021 at 9:08:57 PM IST

To: Sunil Agarwal <skamum1986@gmail.com>

Cc: "delhi.addlcit.cen2" <delhi.addlcit.cen2@incometax.gov.in>

Subject: Re: Allocation of Writ Petition (Civil) No. 5912 of 2021 in the matter of THREE C HOMES PVT LTD (PAN-AADCT7045E) Vs. ASSISTANT COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE- 6, NEW DELHI FOR A.Y. 2018-19.reg-

Greeting Sir,

Please refer to the trailing mail.

In the aforesaid case, all the communication with respect to assessment proceedings u/s 143(3) for AY 2018-19, have been made with the assessee from designated email id i.e., delhi.dcit.cen6@incometax.gov.in only. No other email id has been used for making official communication with the assessee by the undersigned in the concerned proceedings.

With regard to the writ petition, the Petitioner has claimed that the Petitioner has received an email on 31.05.2021 at 4:01 PM from the e-mail ID – DONOTREPLY@incometaxindiaefiling.gov.in. Vide the said e-mail, the Petitioner has allegedly intimated that “Response due date for submission to notice 142(1) is extended up to null.” [Pg 29 (Annexure P4)]. The said communication has not originated

from the office of the undersigned having email id delhi.dcit.cen6@incometax.gov.in.

Further in your trailing mail, you have mentioned that the Hon'ble High Court is of the view that the Income Tax Department is one department and the AO should not have said that "DONOTREPLY@incometaxindiaefiling.gov.in, is a mail not going from the AO/Deptt. With regard to above, the undersigned wish to make a precise submission that the alleged email [Pg 29 (Annexure P4)] has not been sent by the undersigned/AO. As regarding the Deptt, nowhere the undersigned has made any submission before the Hon'ble High Court that the above mail has not been sent by the Deptt. maintaining the same position that the said mail has not been sent by the undersigned/AO having official email id as delhi.dcit.cen6@incometax.gov.in.

To ascertain the source of this email and circumstances along with proceedings under which the said mail has originated, the Directorate of systems, who is having control over all Income Tax systems, has been requested.

*JAI HIND
Regards
DCIT,CC-06
New Delhi”*

15. Keeping in view the aforesaid controversy, this Court is of the view that the matter is serious in nature as one of the parties has either forged the document in question and/or is not telling a complete truth. The respondent's (DCIT, CC-06) offer to now ascertain source of the email from the Directorate of Systems, who is having control over all income tax systems is too late in the day. Any reasonable official would have conducted the said enquiry before filing his counter affidavit and before making a

serious allegation of perjury and forgery, even if prima facie, against the deponent of the writ petition. Consequently, in the opinion of this Court, the said offer of DCIT, CC-06 lacks bonafides.

16. Moreover, as the allegation pertains to a sensitive server belonging to the Ministry of Finance/Department of Income Tax and involves a senior official of the Income Tax Department holding a sensitive post, this Court directs the Central agency, namely Central Bureau of Investigation (CBI) to enquire as to whether the email dated 31st May, 2021 (Annexure P-4) had been issued to the petitioner or not, and if so, by whom. The CBI shall file its enquiry report with this Court within four weeks. The Deponent of the writ petition and the counter affidavit are also directed to cooperate with the officials of the CBI. Registry is also directed to forward a copy of this order along with the entire paper book to the Director, CBI, on or before 20th July, 2021, who in turn, is directed to nominate an officer to conduct the enquiry.

17. This Court clarifies that in the event it is found that the email dated 31st May, 2021 (Annexure P-4) had been forged and fabricated by the petitioner it would initiate action under Sections 191/192/196 of the IPC. However, if it is found that the email dated 31st May, 2021 (Annexure P-4) had been issued by the Income Tax of India's e-filing portal, then it would not hesitate to take action against the Deponent of the counter affidavit for stating '*half-truths*', namely, that the email dated 31st May, 2021 (Annexure P-4) had not been generated by the respondent, as from the order dated 11th June, 2021 and the averment made in the counter affidavit, this Court has no doubt that the inarticulate submission of the respondent is that the email dated 31st May, 2021 (Annexure P-4) has been forged and fabricated by the petitioner.

18. This Court may mention that it is constitutionally bound to ensure that citizens of this country who invoke the extra ordinary jurisdiction of this Court are not intimidated by allegations of forgery and prosecution and that too by officials who do not exercise the duty of care by enquiring as to whether the email had been issued by another wing or Department of Revenue.

19. List on 06th September, 2021.

20. Till further orders, the Assessing Officer shall not take any coercive action against the petitioner.

21. 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

JULY 16, 2021

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