

\$~8

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

+ **W.P.(C) 5166/2021 & CM Nos. 15834-36/2021**

PARVIN KUMAR BATTA

.....Petitioner

Through: Mr. Kapil Goel, Mr. Sandeep Goel
and Mr. Dhananjay Garg, Advs.

versus

DEPUTY COMMISSIONER OF INCOME TAX CENTRAL
CIRCLE 25 DELHI

.....Respondent

Through: Mr. Ajit Sharma, Sr. Standing counsel
for revenue.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE TALWANT SINGH

ORDER

% **05.05.2021**

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

CM No. 15836/2021

1. Allowed, subject to the applicant/petitioner curing the deficiencies referred to in the captioned application within 15 days from today.

CM No. 15835/2021

2. Allowed, subject to just exceptions.

W.P.(C) 5166/2021 & CM No. 15834/2021 [Application filed on behalf of the petitioner seeking stay on the operation of the impugned assessment order dated 22.04.2021]

3. *Via* this writ petition, a challenge has been laid to the assessment order dated 22.04.2021, passed by the revenue, under Section 153C and 143(3) of the Income Tax Act, 1961 (in short “the Act”).

4. Mr. Kapil Goel, who appears for the petitioner, says that there are several flaws in the impugned assessment order. In particular, Mr. Goel emphasizes that there has been a breach of the principles of natural justice.

4.1. In this context, Mr. Goel has adverted to the following:

(i) That the statement of Mr. Prasesh Arya, Chief General Manager of the JBM Group of companies, *qua* which search was being carried out under Section 132 of the Act, was not furnished. The statement of Prasesh Arya, as noted in the impugned assessment order, was recorded under Section 132(4) of the Act on 08.10.2017.

(ii) That, although, the impugned assessment order refers to a two-stage satisfaction note, i.e., one generated by the Assessing officer (in short 'AO'), of the searched person, and the other generated by the AO of the petitioner, the petitioner has been served only with the satisfaction note, dated 31.12.2019, generated by his AO.

(iii) That an addition of Rs. 4.50 crores has been made to the declared income of the petitioner, concerning the assessment year ('AY') 2010-2011, based on the following broad allegation:

(a) The petitioner, who was, at the relevant point in time, acting as the Official Liquidator [OL] attached to the High Court of Madhya Pradesh, was supposedly paid Rs.4.50 crores by Mr. Mathur, CEO of Shreeaumji Infrastructure and Projects Pvt. Ltd. [in short "SIPL"] and that these funds were provided by Mr. Prasesh Arya, Chief General Manager, Finance, JBM Group of companies, controlled and managed by Messrs Nirmal Kumar Minda and Surendra Kumar Arya; who were also the directors on the board of SIPL. The said sum was, allegedly, paid to the petitioner to obtain favourable orders from the concerned court *qua* the factory land located in Rajpura, Punjab that was ultimately secured by the JBM group of companies

by having the labourers vacate the said parcel of land.

(iv) That the revenue has not furnished any material, whereby, Mr. Mathur, who remains unidentified up until today, can be linked to the petitioner.

4.2. In support of his plea that the power available under Section 153C needs to be exercised with care and caution, Mr. Goel has relied upon the judgement of the Supreme Court rendered in *Manish Maheshwari vs. ACIT*, 289 ITR 341 (SC).

5. Mr. Ajit Sharma, learned senior standing counsel, who appears on advance notice on behalf of the revenue, submits that petitioner has alluded to the factual aspects, and therefore, the writ petition should not be entertained.

5.1. According to Mr. Sharma, an alternative remedy is available to the petitioner in the form of an appeal, and his grievances, if any, *qua* the impugned assessment order, can be articulated, to begin with, before the first appellate forum, i.e., Commissioner of Income Tax (Appeals).

6. Having heard the learned counsel for the parties and perused the record, the petitioner has, according to us, at least at this stage, established a *prima facie* case in his favour concerning infraction of the principles of natural justice by the revenue.

6.1. The record shows that the petitioner was served with only an extract of the statement made by Mr. Prasesh Arya. Mr. Sharma, in this behalf, when queried, submitted that the crucial part of the statement was furnished to the petitioner, and therefore, the petitioner can have no grievance.

6.2. Even if we assume that, the stand taken by Mr. Sharma is sustainable, what concerns us at this stage, is the absence of any material furnished to the petitioner, which would link Mr. Mathur to him. As noticed above, the broad allegation against the petitioner is as follows:

“In view of the above, the submission of the assessee is duly considered but not found acceptable. As during the course of search action u/s 132 of the I.T. Act 196 [sic: 1961] carried out in M/s JBM Group of cases on 05.10.2017, Sh. Prashesh Arya (Chief General Manager) Finance of Jai Bharat Maruti Ltd. in his statement recorded u/s 132(4) of the I.T. Act at this premises i.e. B-98, South City01, Gurugram based on documents/papers found and seized which is clearly mentioned above in the show cause, accepted that page no. 210 contains date wise details of the cash receipts aggregating to Rs. 4.50 crore, received in equal proportion from Sh. Surender Kumar Arya of JBM Group and Sh. Nirmal Kumar Minda of Minda Group who are directors in this company (i.e. SIPPL). That the said payments totalling to Rs. 4.50 crore as per the details noted this paper were to made to the Official Liquidator named Mr. Batta during the F.Y. 2009-10 through Mr. Mathur in order to obtain favourable court decision for evacuating the houses of labours existing on the premises of Rajpura Factory. Further, it is clearly showed the complete date wise cash payment of Rs. 4.50 crore was received by the assessee through Sh. Mathur from Sh. Prashesh Arya.”

7. In our view, the matter requires further examination.

8. Accordingly, issue notice. Mr. Sharma accepts service on behalf of the revenue. Counter-affidavit will be filed within four weeks. Rejoinder thereto, if any, will be filed before the next date of hearing.

9. Furthermore, Mr. Sharma will obtain instructions as to whether or not an assessment order has been passed *qua* the JBM Group and/or SIPL.

10. List the matter on 05.08.2021.

11. In the interregnum, there shall be a stay on the operation of the impugned assessment order dated 22.04.2021.

RAJIV SHAKDHER, J

TALWANT SINGH, J

MAY 5, 2021/nk

[Click here to check corrigendum, if any](#)