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

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Date of Decision: 08.05.2024

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W.P.(C) 5768/2024 CM APPL. 23894/2024

BAUSCH AND LOMB INDIA PRIVATE LIMITED..... Petitioner

Through: Mr. Salil Kapoor, Mr. Sumit Kalchandani, Ms. Ananya Kapoor, Mr. Tarun Chanana & Mr. Utkarsa K. Gupta, Advs.

Versus

ASSESSMENT UNIT, NATIONAL FACELESS ASSESSMENT CENTRE, DELHI

..... Respondent

Through: Mr. I. Singh, Mr. Sanjeev Menon, Mr. Rahul Singh, Mr. Nishant Shokeen & Ms. Sumita Singh, Advs.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MS. JUSTICE TARA VITASTA GANJU

VIBHU BAKHRU, J. (Oral)

1. The petitioner (hereafter the *assessee*) has filed the present petition impugning an assessment order dated 26.03.2024 (hereafter the *impugned order*) passed under Section 143(3) read with Section 144B of the Income Tax Act, 1961 (hereafter *the Act*) in respect of the Assessment Year 2022-23 relevant to the Previous Year 2021-22. Although the assessee has an efficacious remedy of an appeal, the assessee seeks to pursue the present petition confining the challenge to the impugned order on the ground that the impugned order was passed in violation of the principles of natural justice.

2. The Assessing Officer has added a sum of ₹70,10,37,475/- (Rupees Seventy Crores Ten Lacs Thirty-seven Thousand Four Hundred Seventy-five Only) to the total income as declared by the assessee, as unexplained



expenditure under Section 69C of the Act. In addition, the Assessing Officer has also initiated penalty proceedings under Section 271AAC(1) of the Act for concealment of income. The controversy essentially relates to the declaration of the purchases made by the assessee during the Previous Year 2021-22. The assessee was called upon to submit the details of the same and had done so. It is the assessee's case that its entire purchases were imports and details of the same were provided. However, the Assessing Officer found that the said declaration was incorrect and the assessee had not disclosed the purchases made in entirety. The addition made by the Assessing Officer under Section 69C of the Act is in respect of the quantum of purchases allegedly concealed by the petitioner.

3. The assessee had disclosed purchases amounting to ₹1,51,41,55,705/- (Rupees Hundred and Fifty-one Crores, Forty-one Lacs Fifty-five Thousand Seven Hundred & Five Only) and the same were duly reflected in the books of accounts of the assessee. However, according to the Assessing Officer, the assessee has made purchases for a value of ₹2,21,51,93,180/- (Rupees Two Hundred Twenty-one Crores Fifty-one Lacs Ninety-three Thousand & One Hundred Eight Only). The Assessing Officer based the said conclusion entirely on the information received from the Central Board of Indirect Taxes & Customs (hereafter *CBIC*) to the effect that the goods purchased / imported by the assessee during the relevant Previous Year were of ₹2,21,51,93,180/-.

4. The assessee had contested the said information. It had demanded the details of the imports made by it which were allegedly concealed. The assessee claims that the said details were not provided and therefore it had no opportunity to effectively respond to the said allegation. The assessee's grievance is that the Assessing Officer had proceeded to frame the



assessment, without affording the assessee the opportunity to effectively contest the ground on which the addition was made.

5. A plain reading of the impugned order indicates that the Assessing Officer has proceeded to make an addition without referring to the details of the imports allegedly concealed by the assessee.

6. The relevant extract of the impugned order reads as under:

“3) CBIC import data :

Assessee has submitted that it has not made the purchases of Rs. 221,51,93,180 as informed by the CBIC. Assessee has submitted details of purchase which contains details of only Rs. 151,41,55,705 worth imports made which it has shown in its books. Assessee has not given any reconciliation or explanation with regard to remaining amount of imports worth 70,10,37,475

Assessee’s explanation can not be acceptable.

CBIC has provided month wise data wherein it has clearly reported that goods worth Rs. 221,51,93,180 have been imported.

Indian Customs department is Apex body which deals with all the imports made and keep tab of every single import entry.

The data is shared by Apex body which deals with the imports and hence its authenticity is unquestioned.

Hence, it has been concluded that assessee has not shown the goods worth Rs.70,10,37,475 in its books of accounts.

Assessee’s was very clearly told in the VC that Indian customs department has provided month wise data for imports along with number of bills generated during each month. Rather than trying to reconcile the data assessee has tried to hide its out of books purchases with the help of certain legal precedents. All the judgments quoted by assessee are not even remotely related to the case. None of the precedent can be said to be binding as facts of the case are not at all same.

Assessee has been explained in the video conference that the



data provided by the CBIC has been shared with him as it is. During the VC it was also made clear that the party wise and date wise data of all the bills has not been provided by the CBIC. Assessee has been reiterating about providing the same data despite being told that the same has not been provided by the CBIC. Assessee is trying to bring on record that it was not presented with sufficient opportunities and the efforts are appreciated. However, it has been made very clear that the data available has been shared with assessee as it is. Assessee was also told about the authenticity of the data as same has been provided by an agency which keeps record of all imported goods in India. Further, assessee was told that in order to refute the data, it should get the certificate from customs department/CBIC saying that the data provided has been wrong. However, assessee has failed miserably to shift the onus which lies on it. It has tried time and again to put the onus back on AU but unless the data is reconciled or assessee gets a certificate from customs department saying the data has been wrong, the onus does not get shifted from assessee.”

7. It is apparent from the above that the Assessing Officer had relied solely on the assumption that the information provided by CBIC was correct notwithstanding that it had not disclosed the details of any import bills and that no reconciliation in this regard was carried out. The Assessing Officer had faulted the assessee for not reconciling the information regarding the quantum of purchases made as received from CBIC with that as disclosed by the assessee.

8. The learned counsel appearing for the respondent submitted that the data as received from CBIC was shared with the assessee. It is seen that the said data is in the form of a tabular statement which indicates the ‘cumulative invoice values’; ‘cumulative duty paid’; and the ‘cumulative assessable value’ for each month. The figures mentioned in the tabular statement are all cumulative figures and do not refer to any bill of entry or particular date of import allegedly made by the assessee. The learned counsel appearing for the



respondent fairly states that apart from the tabular statement as shared with the assessee, the Assessing Officer had no further information from CBIC.

9. It is, thus, apparent that the Assessing Officer also had no knowledge as to which import or purchase made by the assessee was not disclosed by the assessee as the Assessing Officer also had no such information. We accept the contention that apart from stating that it had not imported goods of the value as disclosed, it was impossible for the assessee to dispute the alleged additional purchases. The assessee could not be faulted for not reconciling the data as the information available with the Assessing Officer is wholly insufficient for carrying out any reconciliation exercise. It is obvious that the reconciliation exercise can only be carried out if the details of invoices or Bills of Entry were available. Without such information, it would be impossible to identify the alleged purchases or imports that were subject matter of dispute. If any addition was proposed to be made on the basis that the purchases as reflected in the assessee's books is not correct and it has made certain imports that had not been recorded in the books of accounts, the least that the Assessing Officer was required to do was to identify the entries that ought to have been made in the Books of Accounts of the assessee and which it had failed to do. Merely proceeding on the basis that CBIC is an apex body and therefore, information provided by it cannot be doubted, without even identifying or meaningfully analysing such information, is wholly insufficient to proceed to make an addition. If the relevant details of the alleged imports were not available with the Assessing Officer, and it was not possible to identify the expenditure made by the assessee, it was impermissible for the Assessing Officer to make an addition on account under Section 69C of the Act. Plainly, if the Assessing Officer could not identify the expenditure made, it could not make an addition on account of unexplained



expenditure.

10. In view of the above, we find merit in the contention that the impugned order is unsustainable and has been passed in violations of principles of natural justice. It is obvious that the Assessing Officer must have some material to indicate that an expenditure has been made to make such an addition. The only material in this case are the cumulative amounts as mentioned by CBIC without details of any such expenditure.

11. The decision to fault the assessee in not discharging its onus is plainly erroneous. The assessee having stated that he had not made any purchases other than what are disclosed should obviously cannot carry out any other exercise to refute the allegation of undisclosed purchases without being provided the details of the same.

12. In view of the above, the impugned order is set aside. The matter is remanded to the Assessing Officer for decision afresh in accordance with law. If the Assessing Officer intends to make any addition on account of unexplained expenditure, it can do so only after apprising himself as to the details of such expenditure and providing the assessee necessary opportunity to explain the same.

13. The petition is allowed in the aforesaid terms. The pending application is also disposed of.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

MAY 08, 2024

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Click here to check corrigendum, if any