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IN THE HIGH COURT OF DELHI AT NEW DELHI

MANMOHAN; SUDHIR KUMAR JAIN, JJ.

W.P.(C) 1409/2022 & CM APPL.4052/2022; 3rd March, 2022

KURZ INDIA PRIVATE LIMITED

versus

PRINCIPAL COMMISSIONER OF INCOME TAX -5, NEW DELHI & ORS.

Petitioner Through: Mr.Piyush Kaushik, Advocate.

Respondents Through: Mr.Pratyaksh Gupta, Advocate.

J U D G M E N T

MANMOHAN, J:

1. Present writ petition has been filed challenging the impugned notice dated 28th March, 2021 issued under Section 148 of Income tax Act, 1961 ('the Act') for the assessment year 2015-16.

2. Learned counsel for the Petitioner states that reopening of assessment was done on the sole ground that the petitioner has made a claim of deduction of Rs.1,54,05,798/-; when, in fact, no such claim has ever been made. He states that the Petitioner had only claimed expenses as mentioned in Notes 18 to 23 to the audited accounts. He points out that it is apparent from the audited profit & loss account that the petitioner has not made any claim of contingent liabilities of Rs.1,54,05,798/- (as per Note 24 to audited accounts) as revenue expense. He states that the same was disclosed by way of a written note in accordance with the requirements of applicable Accounting Standards i.e. AS-29.

3. Learned counsel for the Petitioner also submits that reopening is initiated on the basis of review and re-appreciation of the same material i.e. audited accounts which were subject to verification in the course of original assessment proceedings under Section 143(3) which is not permissible in law.

4. On the last dates of hearing, learned counsel for the respondents had sought time to obtain instructions. Today, learned counsel for the respondents refers to Note No.24 to the audited accounts and states that the Assessing Officer wished to ascertain as to how the contingent liability on account of statutory forms – Central Sales Tax had increased from Rs.1,17,51,217/- in the last financial year to Rs.1,51,05,798/- in the current financial year. Learned counsel, in these circumstances, seeks time to file a counter affidavit.

5. Upon perusal of the paper book, this Court finds that the order dated 27th December, 2021 disposing of the objections filed by the petitioner does not deal with any of the contentions or submissions advanced by the petitioner.

6. In fact, the impugned order is based on the premise that the contingent liability has been claimed as revenue expense! In the opinion of this Court, the said reason is

contrary to the facts as well as to the concept of contingent liability which is only required to be disclosed by way of a note in accordance with the requirement of applicable Accounting Standards.

7. The impugned order disposing objections dated 27th December, 2021 also suffers from complete non-application of mind, as there are a lot of repetitions in the impugned order.

8. Consequently, this Court is also of the view that the reason to believe is invalid and has no rational nexus to the belief for escapement of income and there was no fresh material on record to initiate re-assessment proceedings.

9. This Court is further of the view that no useful purpose would be served by giving an opportunity to file a counter affidavit. Accordingly, the said request of learned counsel for the respondent is declined and the impugned notice dated 28th March, 2021 and the order disposing objections dated 27th December, 2021 are quashed.

10. However, in the event the Assessing Officer has some fresh material, he shall be at liberty to take action in accordance with law. In the event such an action is taken, the petitioner shall be at liberty to file appropriate proceedings in accordance with law. Accordingly, the writ petition and application stand disposed of.

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