

\$~33

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

+ **W.P.(C) 3992/2021**

M/S RAMPRASTHA PROMOTERS AND DEVELOPERS PVT.
LTD.Petitioner

Through: Mr. Puneet Agrawal with Mr. Yuvraj
Singh, Ms. Hemlata Rawat and Mr. Chetan K.
Shukla, Advocates.

versus

ASSISTANT COMMISSIONER OF INCOME TAX & ANR.

.....Respondents

Through: Ms. Vibhooti Malhotra, Sr. Standing
Counsel for Revenue.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE TALWANT SINGH

ORDER

%

25.03.2021

CM APPL. 12067/2021

1. Allowed, subject to just exceptions.

W.P.(C) 3992/2021 and CM APPL. 12088/2021

2. This writ petition is directed against a notice dated 13.03.2020 issued *qua* the petitioner/assessee under Section 148 of the Income Tax Act, 1961 [in short "the Act"] concerning assessment year [A.Y.] 2015-2016. The record shows that the petitioner/assessee had filed a return wherein it had declared a loss of Rs.44,03,42,846/-. This return was processed under Section 143(3) of the Act and accordingly an order was passed on 22.12.2016 when the loss was quantified at Rs. 42,26,90,793/-.

3. The record also shows that the petitioner/assessee based on qualification made in the auditor's report debited an amount of Rs.61,08,11,963/- in its profit and loss account; which was the amount incurred towards interest on borrowings.

3.1 The auditor was of the view that the petitioner/assessee had wrongly capitalised the said amount in A.Y. 2015-2016, even though in the previous A.Y.s expenditure of the like nature had been debited.

3.2 The record discloses that in its computation of income filed with the income tax return for A.Y. 2015-2016 the petitioner/assessee had also quantified the taxable income as per the provisions of Section 115 JB of the Act.

3.2 Furthermore, the record shows that after the interest on borrowings, which was quantified at Rs.61,08,11,963/- was taken into account, the loss was pegged at Rs.47,49,30,255/-.

4. The impugned notice is predicated on the fact that the petitioner/assessee claimed deduction of interest when it calculated taxable income under the provisions of Section 115JB of the Act.

5. According to Mr. Punit Agrawal, who appears on behalf of the petitioner/assessee, the notice issued under Section 148 of the Act is unsustainable in law as it amounts to a change of opinion.

5.1 Mr. Agrawal says that the information based on which the impugned notice has been issued was available in the computation appended to the return and the auditor's report as well as in Form – 29B.

6 According to us, the matter requires examination.

6.1. Accordingly, issue notice.

7. Ms. Vibhooti Malhotra, who appears on behalf of the Revenue, accepts service.

7.1 Counter-affidavit, if any, will be filed within four weeks. Rejoinder thereto, if any, will be filed before the next date of hearing.

8. In the meanwhile, if assessment proceedings are carried on, which result in an assessment order being passed, the same will not be given effect to till further orders of the court.

9. List on 28.07.2021.

RAJIV SHAKDHER, J

TALWANT SINGH, J

MARCH 25, 2021

tr

Click here to check corrigendum, if any