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

+ W.P.(C) 13401/2019

ESSAR COMMUNICATIONS LIMITED Petitioner

Through: Mr. Arvind Datar, Sr. Adv. with
Mr. Atul Shankar Mathur, Mr. Prabal
Mehrotra and Mr. Swapnil Tripathi,
Advts.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Ms. Sunny Shangloo, Govt. Pleader
with Mr. Shubham Gandhi, Adv.
Mr. Ruchir Bhatia, Sr. Standing
counsel for Income Tax with Ms.
Madhura Chandra and Mr. Shlok
Chandra, Jr. Standing counsels.

+ W.P.(C) 13405/2019

ESSAR COM LIMITED

..... Petitioner

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Mr. Atul Shankar Mathur, Mr. Prabal
Mehrotra and Mr. Swapnil Tripathi,
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Mr. Ruchir Bhatia, Sr. Standing
counsel for Income Tax with Ms.
Madhura Chandra and Mr. Shlok
Chandra, Jr. Standing counsels.
Ms. Shiva Lakshmi, CGSC.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE SANJEEV NARULA

Signature Not Verified

Signing Date: 21.10.2024 16:53:36
Certify that the digital and physical file have
been compared and the digital data is as per
the physical file and no page is missing.

ORDER

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19.12.2019

CM APPL. 54402/2019 in W.P.(C) 13401/2019 & CM APPL. 54409/2019 in W.P.(C) 13405/2019 (exemptions)

1. Exemptions allowed, subject to all just exceptions.
2. The applications stand disposed of.

CM APPL. 54401/2019 in W.P.(C) 13401/2019 & CM APPL. 54408/2019 in W.P.(C) 13405/2019

3. By these applications, the applicant seeks permission to file additional documents on record. Accordingly, the applications are allowed and additional documents are taken on record.

W.P.(C) 13401/2019 & W.P.(C) 13405/2019

4. Mr. Datar, learned senior counsel for the petitioner submits that consequent upon the issuance of the impugned order dated 10.10.2019 by the Authority for Advance Ruling (Income Tax) in AAR 1373 and 1374 of 2012, the Assessing Officer (AO) has issued notices dated 23.10.2019 and 05.12.2019 for the purpose of carrying out the assessment. He submits that that the petitioner is willing to join the assessment proceedings. He, however, expresses an apprehension that the AO would feel bound by the *prima facie* findings returned by the Authority for Advance Ruling in relation to the alleged tax avoidance.

5. We make it clear that on a reading of the impugned order passed by the said authority, it is evident that the said findings are only *prima facie*, which means, that they are not final and binding, and that they have not been arrived at after detailed examination of the materials placed before the authority or upon consideration of the rival submissions.

6. Thus, it shall be open to the AO and the other statutory authorities to arrive at their own findings upon appreciation of the evidence and the

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materials placed on record and they should be not bound by the *prima facie* findings. While so observing, we also make it clear that we have not ourselves examined the merits of the said *prima facie* findings returned by the authority on the aspect of the tax avoidance.

7. Mr. Datar, submits that the issue that remains to be determined is whether the petitioner would be entitled to the benefit of the Indian-Mauritius Double Taxation Avoidance Treaty, and consequently to refund of tax deducted and paid by the purchaser of the shares in the year 2011. He, therefore, submits that the assessment proceedings may be expedited.

8. Mr. Bhatia, Sr. standing counsel who appears on advance notice states that assessment gets time barred on 31st December, 2020. In view of the aforesaid, we hope and expect that the AO would expedite the assessment proceedings and would pass the assessment order preferably, on or before, 30.06.2020, subject to the petitioner co-operating in the assessment proceedings and not taking any adjournments.

9. In view of the above, the petitions stand disposed of.


VIPIN SANGHI, J


SANJEEV NARULA, J

DECEMBER 19, 2019

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