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

+ **W.P.(C) 7092/2022**

**PREM BROTHERS INFRASTRUCTURE
LLP.**

..... Petitioner

Through: Mr. Ved Kumar Jain, Advocate.

versus

**NATIONAL FACELESS ASSESSMENT
CENTRE & ANR.**

..... Respondents

Through: Mr. Sanjay Kumar, Advocate.

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Date of Decision: 31st May, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMOHAN, J:

1. Present writ petition has been filed challenging the impugned order dated 28th March, 2022 passed by Respondent No. 1 under section 270A of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') levying penalty of Rs.2,50,78,168/-. The petitioner also seeks a direction to Respondent No. 1 to grant immunity under Section 270AA of the Act to the Petitioner from imposition of penalty and prosecution under Section 270A of the Act in respect of the income assessed vide assessment order dated 30th April, 2021 for the Assessment Year 2018-19.

2. By way of the impugned order, dated 28th March, 2022, the

Respondent no.1 levied a penalty of Rs.2,50,78,168/- under section 270A of the Act alleging misreporting of income.

3. Learned counsel for the Petitioner submits that no independent order under section 270AA(4) of the Act has been passed by the Respondent on the application filed by the Petitioner seeking immunity under section 270AA of the Act. In the impugned penalty order, the Respondent No.1 has simply rejected the said application which otherwise is barred by limitation in terms of Section 270AA(4) of the Act, having been passed well beyond the period of one month from the end of the month in which the Petitioner had filed the application seeking immunity.

4. He further states that in the instant case, the only addition in the assessment order is in respect of disallowance under section 14A of the Act. The Petitioner itself has made a disallowance of Rs.3,20,14,010/- which was more than the exempt income of Rs.45,08,371/-. The Respondent No. 1 has enhanced this disallowance to Rs.6,82,45,759/-. He submits that this Court in *Joint Investments Pvt Ltd Versus Commissioner of Income Tax, [2015] 372 ITR 694 (Del)* has held that disallowance under section 14A of the Act cannot exceed exempt income. He submits that when disallowance over and above exempt income itself is not permissible, there can't be any misreporting of income. He further submits that in any case, the issue involved herein is of estimation of disallowance under section 14A of the Act. He submits that as per clause (c) of section 270A(6) of the Act, no penalty is leviable where the amount of underreported income is determined on the basis of an estimate, if the assessee has on his own, estimated a lower amount of disallowance on the same issue and had included such income in the computation of his income. Further, this is a case where all the facts,

information, documents and figures submitted by the Petitioner had been accepted by the Respondents and the subject matter of dispute is a pure estimation of disallowance under section 14A of the Act. He further submits that even otherwise this issue of disallowance under section 14A of the Act does not fall in any of the limb of “misreporting” of income stated in section 270A (9) of the Act.

5. Issue notice. Mr. Sanjay Kumar, learned senior standing counsel accepts notice on behalf of the Respondents. He relies on the impugned order dated 28th March, 2022 to contend that the Petitioner is not entitled to the benefit of immunity under Section 270AA of the Act. He submits that the assessee in the present case did not make the correct disallowance under Section 14A of the Act and thus the assessee not only underreported the income but also misreported the income and therefore, the AO has rightly imposed the penalty under Section 270A of the Act and declined the immunity under Section 270AA of the Act.

6. This court in the case of ***Schneider Electric South East Asia (HQ) PTE Ltd. Vs. ACIT, International Taxation Circle 3(1)(2), New Delhi and Ors. W.P.(C) No. 5111/2022*** vide judgment dated 28.03.2022 observed as under:-

“6. Having perused the impugned order dated 9th March, 2022, this Court is of the view that the Respondents’ action of denying the benefit of immunity on the ground that the penalty was initiated under Section 270A of the Act for misreporting of income is not only erroneous but also arbitrary and bereft of any

reason as in the penalty notice the Respondents have failed to specify the limb - "underreporting" or "misreporting" of income, under which the penalty proceedings had been initiated.

7. This Court also finds that there is not even a whisper as to which limb of Section 270A of the Act is attracted and how the ingredient of sub-section (9) of Section 270A is satisfied. In the absence of such particulars, the mere reference to the word "misreporting" by the Respondents in the assessment order to deny immunity from imposition of penalty and prosecution makes the impugned order manifestly arbitrary.

8. This Court is of the opinion that the entire edifice of the assessment order framed by Respondent No.1 was actually voluntary computation of income filed by the Petitioner to buy peace and avoid litigation, which fact has been duly noted and accepted in the assessment order as well and consequently, there is no question of any misreporting.

9. This Court is further of the view that the impugned action of Respondent No.1 is contrary to the avowed Legislative intent of Section 270AA of the Act to encourage/incentivize a taxpayer to (i) fast-track settlement of issue, (ii) recover tax demand; and (iii) reduce protracted litigation.

10. Consequently, the impugned order dated 09th

March, 2022 passed by Respondent No.1 under Section 270AA (4) of the Act is set aside and Respondent No.1 is directed to grant immunity under Section 270AA of the Act to the Petitioner.”

7. This Court is of the opinion that the only addition in the assessment order framed by Respondent No.1 is in respect of disallowance under section 14A of the Act. The Petitioner has made a disallowance of Rs.3,20,14,010/- which was recomputed by the Assessing Officer at Rs.6,82,45,759/-. Thus, this is a case where the amount of underreporting of income is consequent to increase in the disallowance voluntarily estimated by the assessee. This court is conscious of the fact that there can be cases where underreporting of income may result in misreporting of income, however, in peculiar facts of the present case, the underreporting allegedly done by the assessee cannot amount to misreporting as the assessee had furnished all the details of the transactions relating to disallowance made under Section 14A of the Act and the AO as well as assessee has used the same details to arrive at different conclusions i.e. differing quantum of disallowances under Section 14A of the Act. This by no stretch of imagination can be held to be ‘misreporting’.

8. This Court also finds that there is not even a whisper as to which limb of Section 270A of the Act is attracted and how the ingredient of sub-section (9) of Section 270A is satisfied. In the absence of such particulars, the mere reference to the word "misreporting" by the Respondents in the penalty order to deny immunity from imposition of penalty and prosecution makes the impugned order manifestly arbitrary.

9. Consequently, the impugned penalty order dated 28th March, 2022 passed by Respondent No.1 under Section 270A of the Act is quashed and Respondent No.1 is directed to grant immunity under Section 270AA of the Act to the Petitioner.

10. With the aforesaid directions, the present writ petition along with pending applications stand disposed of.

MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

MAY 31, 2022

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