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

+ W.P.(C) 5111/2022 & C.M.Nos.15165-15166/2022

SCHNEIDER ELECTRIC SOUTH EAST ASIA (HQ) PTE LTD

..... Petitioner

Through Mr.Sachit Jolly with Mr.Rohit Garg,
Ms.Disha Jham, Ms.Mehak Sachdeva
and Mr.Sohum Dua, Advocates.

versus

**ASST COMMISSIONER OF INCOME TAX INTERNATIONAL
TAXATION CIRCLE 3 (1)(2), NEW DELHI AND ORS.**

..... Respondents

Through Mr.Sunil Agarwal, senior standing
counsel with Mr. Tushar Gupta and
Mr. Amarth Chaudhari, Advocates
for the Revenue.

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Date of Decision: 28th March, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

MANMOHAN, J (Oral):

1. Present writ petition has been filed challenging the impugned order dated 09th March, 2022 passed by Respondent No.1 under section 270AA(4) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') rejecting

the application filed by the Petitioner seeking immunity from imposition of penalty under section 270A of the Act for the Assessment Year 2018-19. 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 under Section 270A of the Act in respect of the income assessed vide assessment order dated 23rd June, 2021 for the Assessment Year 2018-19.

2. By way of the impugned order, dated 09th March, 2022, the Petitioner's application was rejected on the ground that the case of the Petitioner did not fall within the scope and ambit of Section 270AA of the Act.

3. Learned counsel for the Petitioner submits that the impugned order 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 states that in the instant case, 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 question of law, being interpretation of the contracts and the provisions of the Act & DTAA, for which there cannot be any allegation of "misreporting" of income on the part of the Petitioner.

5. Issue notice. Mr.Sunil Agarwal, learned senior standing counsel accepts notice on behalf of the Respondents. He relies on the impugned order dated 09th March, 2022 to contend that the Petitioner is not entitled to the benefit of immunity under Section 270AA of the Act.

6. Having perused the impugned order dated 09th 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.

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

MANMOHAN, J

DINESH KUMAR SHARMA, J

MARCH 28, 2022
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