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

+ W.P.(C) 5839/2022 & CM APPLs.17517-17518/2022

NIRMAN OVERSEAS PRIVATE LIMITED

..... Petitioner

Through: Ms.Kavita Jha, Advocate with
Mr.Himanshu Aggarwal and
Mr.Aditeya Bali, Advocates.

versus

**NATIONAL FACELESS ASSESSMENT
CENTRE DELHI**

..... Respondent

Through: Mr.Ajit Sharma, Advocate.

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Date of Decision: 8th April, 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 order dated 16th March, 2022 passed by the Respondent under Section 270A of the Income Tax Act, 1961 [‘the Act’] for the assessment year 2018-19. Petitioner also seeks immunity under Section 270AA from imposition of penalty under Section 270A of the Act in respect of the income assessed vide assessment order dated 18th February, 2021 for the assessment year 2018-19.

2. Learned counsel for the petitioner states that the Petitioner had filed its return of income for the assessment year 2018-19 declaring a loss of Rs.2,17,53,363/-. She states that the Petitioner's case was selected for scrutiny and an order dated 18th February, 2021 was passed under Section 143(3) of the Act bringing to tax Rs.2,16,28,054 as "business income" of the Petitioner and consequently assessed the total income of the Petitioner at a loss of Rs.1,25,309/-, raising tax demand of Rs.NIL. She further states that a show cause notice dated 22nd February, 2021 seeking to levy penalty under Section 270A read with Section 274 of the Act was issued by Respondent requiring the Petitioner to show cause as to why the penalty for under-reported income be not levied.

3. Learned counsel for the petitioner states that the Petitioner filed an application dated 3rd March, 2021 before the respondent in Form No.68 in terms of Section 270AA(2) seeking immunity from imposition of penalty under Section 270A of the Act. She states that the Respondent issued the impugned order dated 16th March, 2022 denying the immunity from penalty and prosecuting the Petitioner on the ground that since no order under Section 270AA had been passed by the jurisdictional Assessing Officer within the statutory timeline, it may be treated as no order granting immunity to the assessee had been passed. She further states that the Respondents while denying statutory immunity to the Petitioner under Section 270AA of the Act has failed to appreciate that once the conditions specified in Section 270AA of the Act are satisfied, the assessing officer was bound to grant immunity to the Petitioner.

4. Having heard learned counsel for the petitioner, this Court is of the view that it is only in cases where proceedings for levy of penalty have been

initiated on account of alleged misreporting of income that an assessee is prohibited from applying and availing the benefit of immunity from penalty and prosecution under Section 270AA.

5. In fact, the statutory scheme for grant of immunity is based on satisfaction of three fundamental conditions, namely, (i) payment of tax demand; (ii) non-institution of appeal; and (iii) initiation of penalty on account of underreporting of income and not on account of misreporting of income.

6. This Court is also of the view that the petitioner cannot be prejudiced by the inaction of the Assessing Officer in passing an order under Section 270AA of the Act within the statutory time limit as it is settled law that no prejudice can be caused to any assessee on account of delay/default on the part of the Revenue.

7. In the present case, the petitioner has satisfied the aforesaid conditions, inasmuch as, (i) the tax has been paid on the additions; (ii) appeal has undisputedly not been filed; and (iii) penalty (as would be evident from the penalty notice) has been initiated on account of “under-reporting” of income.

8. Consequently, this Court is of the view that the petitioner acquired a right to be granted immunity under Section 270AA of the Act. In fact, this Court, in *Schneider Electric South East Asia (HQ) Pte Ltd. Vs. Asst. Commissioner of Income Tax International Taxation Circle 3(1)(2), New Delhi and Ors., WP(C) 5111/2022*, has held, “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.”

9. Consequently, the impugned order under Section 270A of the Act is set aside and the respondent 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 stands disposed of.

MANMOHAN, J

DINESH KUMAR SHARMA, J

APRIL 8, 2022

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