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

\+ **W.P.(C) 8974/2019**

SHREE BHAVANI POWER PROJECTS PVT. LTD ..... Petitioner

Through: Mr.Satyen Sethi, Mr.Arta Trana Panda and Ms.Gargi Sethee, Advocates.

versus

INCOME TAX OFFICER, WARD 23(3), & ANR. ..... Respondent

Through: Mr. Raghvendra Singh, Senior Standing Counsel with Mr. Vipul Agrawal, Junior Standing Counsel.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

O R D E R

% 20.08.2019

CM APPL. 37011/2019 (exemption)

1. Allowed, subject to all just exceptions.

W.P.(C) 8974/2019 and CM APPL. 37010/2019 (stay)

2. Notice. Mr. Raghvendra Singh, Senior Standing Counsel, accepts notice for the Respondents. With the consent of parties, the writ petition is heard finally.

3. This is a writ petition seeking a direction to the Respondents to set aside the impugned notice dated 26th March 2019 issued under Section 148 of Income Tax Act, 1961 (Act) which seeks to reopen the assessment of the Petitioner for the Assessment Year (AY) 2017-18 and the consequential

impugned order dated 07th August 2019 rejecting the objections of the petitioner to the reopening of the assessment.

4. From the 'reasons to believe' communicated to the Petitioner, it is seen that the assessment was reopened on the ground that the audit report of the Assessee which was to be electronically filed in Form 10CCB for claiming deduction under Section 80IA of the Act in the sum of Rs.1,24,04,182/- had not been filed and, therefore, the said deduction was not allowable.

5. For the said AY 2017-18 the admitted position is that the return of the Petitioner was filed on 31st October 2017 and an intimation was sent to the Petitioner on 30th October 2018 under Section 143 (1) of the Act. A copy of the said intimation is enclosed as Annexure-P5 to the petition. The relevant row in the said intimation as regards 'deductions under Chapter IV-A' is row No.12. There are four columns in this row. The third column is titled as 'as provided by tax payer in return of income' and the last column is titled 'as computed under Section 143(1)'. It is seen that while the Petitioner has claimed Rs.1,24,04,182/- in the third column, the figure indicated in the last column is '0'. In other words, the entire deduction claimed by the Petitioner under Section 80IA of the Act was disallowed by the Respondents and this was communicated to the Petitioner in the intimation sent under Section 143(1) of the Act.

6. The Court finds that in the objection raised by the Petitioner vide letter dated 7th May, 2019 addressed to the AO, the Petitioner clearly stated that 'the case was processed under Section 143(1) disallowing the deduction

claim under Section 80IA(4)(iv)(a) of Rs.1,24,04,182/- and demand of Rs.42,83,943/- has been raised.' In that view of the matter, it appears to the Court that there is an obvious non-application of mind by the AO to the above fact. If indeed the above deduction claimed by the Petitioner was not allowed in the first instance, and the intimation sent to the Petitioner under Section 143(1) of the Act indicated this, then the question of any income escaping assessment on that score did not arise.

7. In that view of the matter, the Court hereby sets aside the impugned notice dated 26th March 2019 issued by the AO and the consequential order dated 7th August 2019 rejecting the objections raised by the Petitioner to the reopening of the assessment for AY 2017-18. The petition is accordingly allowed. The pending application also is disposed of.

S. MURALIDHAR, J.

TALWANT SINGH, J.

AUGUST 20, 2019
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