IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2023

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THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.No.18550 of 2021 and
WMP.Nos.19791 and 19794 of 2021

Beta Wind Farm Pvt Ltd.
New No.10/1, BASCON FUTURA SV
4th Floor, Venkatnarayana Road,
T.Nagar,Chennai-600017. ... Petitioner

..Vs...

The Deputy Commissioner of INcome Tax
Corporate Ward 1(1) Chennai
Aaykar Bhawan, Nungambakkam,
Chennai. ... Respondent

Prayer: Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the Respondent in his proceedings leading to issue of Order vide ITBA/COM/F/17/2021-22/1034615621 (1) dated 03.08.2021, quash the same and direct the Respondent to rectify the re-assessment order dated

19.04.2021.

For Petitioner : Mr.S.Sathiyanarayanan

For Respondents : Dr.B.Ramanakumar
Senior Standing Counsel

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ORDER

This Writ Petition has been filed challenging the Order of the Respondent dated 03.08.2021 in ITBA/COM/F/17/2021-22/1034615621 (1) dated 03.08.2021, whereby the Petitioner's application filed under Section 154 of the Income Tax Act, 1961 (in short 'the Act') has been rejected on the ground that there is no error apparent on the face of the record in the Assessment Order dated 19.04.2021 for the Assessment Year 2018-19 and also to direct the Respondent to rectify the re-assessment order dated 19.04.2021.

2. The case of the Petitioner is that in the course of re-assessment proceedings, the Assessment Officer have wrongly added ICDS to the tune of

Rs.1,16,94,559/- (Rupees One Crore Sixteen Lakhs Ninety Four Thousand Five Hundred and Fifty Nine only) while computing taxable income under Section 115JB of the Act . It is further stated that in terms of provisions of law, ICDS will be added in the normal course in determining the income, but in the present case on hand, the assessee is liable to pay the tax in terms of provisions under Section 115JB of the Act and hence the Petitioner filed a Rectification Petition u/s. 154 of the Act, which was rejected by the Respondent vide order dated 03.08.2021 and the said order is impugned in this Writ Petition.

2. The learned counsel for the Petitioner submitted that as per law, the authority has to determine the deemed income without adding ICDS, but the authority has wrongly passed the reassessment order and thus there is an error apparent on the face of record. In support of this contention, he relied upon the Judgment of Hon'ble Supreme Court in the case of ***M.K.Venkatachalam Vs. Bombay Dyeing & Manufacturing Co. Ltd***. reported in ***[1958] 34 ITR 143 (SC),*** wherein the Hon'ble Supreme Court has observed that if there is a mistake of fact apparent from the record of the

assessment order, the same can be rectified under Section 35 of the Act.

3. The learned Senior Counsel appearing for the Respondent has fairly submitted that there is an error crept in passing the order, but the Respondent has not considered the same and therefore he submitted that if any order is passed by this Court, the same will be complied with.

4. I have heard the submissions made by learned counsel appearing on either side and perused the material available on record.

5. Upon hearing the the submissions made by learned counsel appearing on either side and upon perusing the documents it appears that while passing the reassessment order, the Respondents have added ICDS to an extent of Rs.1,16,94,559/- (Rupees One Crore Sixteen Lakhs Ninety Four Thousand Five Hundred and Fifty Nine only) while computing income in terms of Section 115JB of the Act. There is no provision in law to add ICDS and therefore when there was no provision, the question of adding the said ICDS while calculating deemed income under Section 115JB would not arise.

6. In such view of the matter, the aforesaid error has to be rectified. The Hon'ble Supreme Court in the case of ***M.K.Venkatachalam Vs. Bombay Dyeing & Manufacturing Co. Ltd***. reported in ***[1958] 34 ITR 143 (SC)*** dealt with this aspect in the following manner:

> *"It is in the light of this position that the extent of the Income-tax Officer's power under section 35 to rectify mistakes apparent from the record must be determined; and, in doing so, the scope and effect of the expression "mistake apparent from the record" has to be ascertained. At that time when the Income-tax Officer applied his mind to the question of rectifying the alleged mistake, there can be no doubt that he had to read the principal Act as containing the inserted proviso as from April 1, 1952. If that be the true position then the order which he made giving credit to the respondent for Rs.50,603-15.0 is plainly and obviously inconsistent with a specific and clear provision of the statute and that must inevitably be treated as a mistake of law apparent from the record. If a mistake of fact apparent from the record of the assessment order can be rectified under section 35, we see no reason why a mistake of law which is glaring and obvious cannot be simply rectified. Prima facie it may appear somewhat strange that an order which was good and valid when it was made should be treated as patently invalid and wrong by virtue of the respective operation of the Amendment Act. But such a result is*

> *necessarily involved in the legal fiction about retrospective operation of the Amendment Act. If, as a result of the said fiction, we must read the subsequently inserted proviso as forming part of section 18A(5) of the principal Act as from April 1, 1952, the conclusion is inescapable that the order in question is inconsistent with the provisions of the said proviso and must be deemed to suffer from a mistake apparent from the record. That is why we think that the Income-tax officer was justified in the present case in exercising his power under section 35 and rectifying the said mistakes. Incidentally we may mention that in Meka Venkatappaiah V. Additional Income-tax officer Bapatala [1957] 32 ITR 274, the High Court of Andhra has taken the same view.*"

7. From the perusal of the above decision, it is clear that in the event of any mistakes on the record both in law and on facts, it can be rectified. Following the same, this Court is inclined to set aside the impugned order. Therefore, I set aside the order passed by the Respondent dated 19.04.2021 and remitted the matter back to the authority concerned for rectification.

In the result, this Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

29.11.2023

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To:

The Deputy Commissioner of INcome Tax
Corporate Ward 1(1) Chennai
Aaykar Bhawan, Nungambakkam,
Chennai.

KRISHNAN RAMASAMY, J.

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