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W.A.Nos.2759 & 2766 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.10.2023

CORAM

THE HON'BLE Mr. JUSTICE R. MAHADEVAN
AND
THE HON'BLE Mr. JUSTICE MOHAMMED SHAFFIQ

W.A.Nos.2759 & 2766 of 2023
AND
C.M.P.Nos.23176 & 23237 of 2023

Shapoorji Pallonji Solar Holdings Private Limited
(Merged with Shapoorji Pallonji Infrastructure
Capital Company Private Limited)
Rep. by its Power of Attorney Holder Ritesh Dedhia
SP Centre, 41/44, Minoo Desai Marg
Colaba, Mumbai 400 005

.. Appellant
in both W.A.s

Vs.

1.The Income Tax Officer
Income Tax Department
National Faceless Assessment Centre
Ministry of Finance
Room No.401, 2nd Floor, E-Ramp
Jawaharlal Nehru Stadium
Delhi 110 003

2.The Deputy Commissioner of Income Tax
Corporate Circle 3(1)
Ayakar Bhavan, Nungambakkam
Chennai 600 034

.. Respondents
in both W.A.s



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Writ Appeals filed under Clause 15 of the Letters Patent, against the common order dated 29.03.2023 passed by the learned Judge in W.P.Nos.9142& 9145 of 2023.

For Appellant : Mr.Vijay Narayan
in both W.A.s Senior Counsel for
Mr.Rahul Unnikrishnan

For Respondents : Mr.R.S.Balaji
in both W.A.s Senior Standing Counsel
assisted by
Mr.S.Premalatha

COMMON JUDGMENT

(Judgment of the Court was delivered by R. MAHADEVAN, J.)

Challenging the common order dated 29.03.2023 passed by the learned Judge in W.P.Nos.9142 and 9145 of 2023, dismissing the writ petitions holding that there was no extraordinary circumstance to intervene with the assessment order dated 28.12.2022 passed by the assessing authority and it is for the writ petitioner to pursue the statutory appeal that was filed in January 2023, the present writ appeals have been preferred by the writ petitioner before this Court.



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2.The above two writ petitions have been filed by the appellant herein against the assessment order and the demand notice. It was contended before the learned Judge on the side of the appellant that the order of assessment proposed variation under the faceless assessment scheme and in view of the observation that the appellant was not entitled to long term capital loss, the order has travelled beyond the scope of show cause notice thus violating Section 144B(1)(xii) of the Income-tax Act, 1961. The impugned show cause notice has been issued in direct contravention of the provisions of the Act read with the rules, having regard to the fact that the impugned notice fails to provide for refund of the amount that the appellant is entitled to. The impugned assessment order as well as the show cause notice have been issued wholly without jurisdiction and hence, the same are liable to be set aside. It was also contended that the order passed by the authority ignores the well established position that once there is a notice proposing variation, a new variation cannot be sought to be made in the final order. The fact remained that the appellant has challenged the impugned order of assessment by way of statutory appeal in January 2023. Thus, holding that remedy under Article 226 of the Constitution of India constitutes an extraordinary remedy, but in the present case, it has been resorted to only as an afterthought and that, no extraordinary circumstances are available, the learned Judge rejected the writ petitions filed by the appellant



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herein. Challenging the common order passed by the learned Judge, the appellant has preferred these present appeals.

3.The learned senior counsel appearing for the appellant has submitted that the learned Judge, by holding that the appellant was entitled to pursue the statutory remedy, has failed to take into consideration the ground raised by them that the assessment order was passed in violation of Section 144B of the Income-tax Act. The learned Judge also failed to take note of the fact that the assessment order traversed beyond the proposed variations under the show cause notice and hence, the same was passed wholly without jurisdiction. With regard to extraordinary circumstance, the learned senior counsel submitted that when there is violation of the principles of natural justice and the order being passed without jurisdiction, the same constitutes an extraordinary circumstance warranting interference by this Court under Article 226 of the Constitution of India. Finally, it has been stressed by the learned senior counsel that since the assessment order has travelled beyond the proposed variations under the show cause notice and has violated principles of natural justice, which is impermissible in law, there is no efficacious remedy other than filing a writ petition before the writ Court. However, the learned Judge instead of entertaining the same, dismissed the writ petitions by the order impugned herein, which will have to be set aside.



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4.The learned standing counsel for the Income Tax Department has submitted that the impugned order of the learned Judge does not require any interference by this Court since it has been passed, after a thorough analysis of the materials in accordance with law.

5.Heard the learned counsel on either side and perused the materials available on record carefully and meticulously.

6.The specific grounds raised in these writ appeals on the side of the appellant are that the order of assessment proposed variation under the faceless assessment scheme and in view of the observation that the appellant was not entitled to long term capital loss, the order has travelled beyond the scope of show cause notice, thereby violating Section 144B(1)(xii) of the Income-tax Act, 1961; that the impugned show cause notice has been issued in direct contravention of the provisions of the Act read with the rules; that the order passed by the authority ignores the well established position that once there is a notice proposing variation, a new variation cannot be sought to be made in the final order; and that the learned Judge did not address any of these aspects and also the case laws and oral submissions made on the side of the appellant, at the time of hearing the writ petitions.



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7. On a perusal of the order impugned herein, it could be seen that the learned Judge, while dismissing the writ petitions, held that the matter may be pursued in the statutory appeal which was filed by the appellant before the appellate authority. Considering the facts and circumstances of the case and having regard to the submissions made by the learned counsel on either side, this Court deems it fit and proper to direct the appellate authority to take into account the above specific grounds raised by the appellant while considering the appellant's appeal, which was filed on 27.01.2023 in acknowledgement No.936232740270123 and pass appropriate orders on merits and in accordance with law, after affording an opportunity of personal hearing to the appellant, within a period of twelve weeks from the date of receipt of a copy of this judgment.

8. Accordingly, both these writ appeals stand disposed of. No costs. Connected Miscellaneous Petitions are closed.

[R.M.D,J.] [M.S.Q, J.]

18.10.2023

Internet : Yes
Neutral Citation : Yes/No
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