IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3748 OF 2024

Tata Autocomp Gotion Green Energy Solutions Private Limited …**Petitioner**

Versus

Central Board of Direct Taxes & Ors. …**Respondents**

Mr. P. J. Pardiwalla, Senior Advocate, with Mr. Madhur Agrawal, Mr. Upendra Lokegaonkar, i/b. Mint & Confreres, for Petitioner.
Mr. Ahileshwar Sharma, for Respondents-Revenue.

CORAM: K. R. SHRIRAM &
DR. NEELA GOKHALE, JJ.
DATED: 18th March, 2024

PC:-

1. Petitioner is impugning an order dated 5th December 2023 passed under section 119(2)(b) of the Income Tax Act, 1961 ("**the Act**") passed by Respondent No.1 Central Board of Direct Taxes ("**CBDT**").

2. Petitioner was set up to be a joint venture between Tata Autocomp Systems Ltd. ("**Tata Autocomp**") and Hefei Guoxuan High-Tech Power Energy Co. Ltd. ("**GOTION CHINA**"), a company incorporated in the Republic of China. Petitioner was to be owned 60% by Tata Autocomp and 40% by GOTION China.

3. Subsequent to the incorporation of Petitioner and prior to the contribution to the share capital by the joint venture partners, the

Note: This order is modified by a Speaking to Minutes order dated 2nd April 2024.

Foreign Direct Investment ("**FDI**") policy came to be amended. The amendment provided that any entity of a country, which shares the land border with India can invest only under the Government Rule. The FDI investments, therefore, from such entity would require prior approval of the Government of India.

4. Petitioner applied to the Government of India on 12th November 2020 seeking approval for allowing GOTION China to invest in Petitioner to the extent of 40% of the share holdings. The approval was granted on 6th December 2021 subject to the terms and conditions specified therein.

5. Petitioner states that the need to take approvals and the COVID-19 pandemic which lasted in China for a longer period, on or about April/May 2022 Petitioner received the share capital from GOTION China and around the same time, Tata Autocomp also contributed to the share capital. Petitioner also received approval from the Ministry of Corporate Affairs for the declaration for commencement of business. Commercial production started at the fag end of Financial Year ("**FY**") 2022-23 and the first bill for sale was raised on 31st March 2023.

6. Though Petitioner had not entered into any transaction for FY 2019-20 pertaining to Assessment Year ("**AY**") 2020-21, Petitioner filed its return of income ("**ROI**") on 10th February 2021.

Subsequently, Petitioner filed its ROI for AY 2021-22 on 14th March 2022.

7. For AY 2020-21 and 2021-22, Petitioner had not exercised the option to be governed by Section 115BAB of the Act, which Petitioner thought of exercising for AY 2022-23. Therefore, Petitioner filed, by way of abundant caution, an application under Section 119(2)(b) of the Act for condoning delay, if any, in filing Form 10-ID to avail the beneficial rate of tax of 15% under Section 115BAB of the Act for reasons mentioned in the application.

8. Petitioner was given a personal hearing on or about 19th October 2023 by Member (IT&R), CBDT. Thereafter, the order dated 5th December 2023, that is impugned in this petition came to be passed. No affidavit in reply has been filed though petition was served on or about 8th February 2024.

9. Mr. Sharma states he has recently been instructed to take over the matter and undertakes to file vakalatnama within one week. He is seeking some time to file a reply. Mr. Agrawal, on instructions, states petition was served on Respondents on or about 8th February 2024 and, therefore, Respondents had almost six weeks to file a reply. We agree with Mr. Agrawal. Mr. Sharma states, the brief was earlier handed by Mr. Manwani, who has with effect from 6th March 2024 also resigned from the Panel.

10. We have considered the impugned order which has been challenged on various grounds, but two points, which stand out are that *firstly,* the order has not been passed or signed by the Member who gave a personal hearing and *secondly,* in the order reliance has been placed on the report of the Field Authorities, which Mr. Agrawal, on instructions, states, has not been provided. Mr. Agrawal stated that such a report was received by CBDT and considered itself came to light only when Petitioner received the impugned order. Mr. Agrawal states that Petitioner's officers were called by the 'Field Authorities'. Their explanations were sought after which nothing was received by the Assessee from the Field Authorities. In our view, principles of natural justice would require that Respondent No.1 should have made a copy of the report received by them from the Field Authorities to Petitioner and given an opportunity to Petitioner to explain or show cause. We understand from Mr. Agrawal that even during the personal hearing, it was not informed to Petitioner that there was such a report.

11. Moreover, the order says, "This issues with the approval of Member (IT&R), Central Board of Direct Taxes" and is signed by one Virender Singh, Additional Commissioner of Income Tax (ITA Cell), CBDT, New Delhi. If a personal hearing has been granted by the Member (IT&R), the order should have been passed by him. Mr. Sharma states there could be file notings. If that is so, that has not

been made available to Petitioner.

12. In the circumstances, on these two grounds alone, we quash and set aside the impugned order dated 5th December 2023 and remand the matter to CBDT. The Member/Members shall within three weeks from the date this order is uploaded make available to Petitioner all Field Reports/documents/instructions received by the CBDT from the Field Authorities and within two weeks of receiving the same, Petitioner shall file, if advised, further submissions in support of their application for condonation of delay.

13. Thereafter, an order shall be written, passed and that order shall be authored and signed by the Member of CBDT, who has given a personal hearing and when we say this, it is not the Member holding the same designation. The same individual who gave a personal hearing, shall write and sign the order. All rights and contentions of Petitioner are kept open. Before passing any order which shall be a reasoned order dealing with all submissions of Petitioner, a personal hearing shall be given to Petitioner, notice whereof shall be communicated at least seven working days in advance.

13. Petition disposed.

(DR. NEELA GOKHALE, J.) **(K. R. SHRIRAM, J.)**

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