IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6122 OF 2024

Inventive Global Solutions Pvt. Ltd. **...Petitioner**
Versus
Assessment Unit Income Tax Department
National Faceless Assessment Centre & Ors. **...Respondents**

Mr. Mihir C. Naniwadekar, with Ms. Rucha Vaidya & Mr. Rururaj H. Gurjar, for Petitioner.
Mr. Arjun Gupta, for Respondents/Revenue.

CORAM: K. R. SHRIRAM &
DR. NEELA GOKHALE, JJ.
DATED: 29th April 2024

PC:-

1. **Rule**. Rule made returnable forthwith. By consent of parties, taken up for final hearing.

2. Petitioner is impugning the assessment order dated 28th February 2024 passed by Respondent No.1 under Section 143(3) read with Section 144C(3) read with 144B of the Income Tax act, 1961 ("**the Act**") along with consequential notice of demand under Section 156 of the Act and penalty notice under Section 270A of the Act.

3. Petitioner's case is that Section 144C(2) of the Act, *inter alia,* requires Assessee, should he to choose to file reference before the Dispute Resolution Panel (DRP) to file such objection within 30 days from the receipt of Draft Assessment Order. The section also requires

Assessee to file a copy of the reference with the Assessing Officer ("**AO**") within the time limit prescribed. Section 144C(4) of the Act requires AO to pass a final order within one month from the end of the month in which the period of filing of objections before DRP and AO expires.

4. According to Petitioner, though Section 144C of the Act requires Petitioner to communicate the objection filed before the DRP to the AO, due to oversight/inadvertence Petitioner did not inform the AO within 30 days period prescribed under Sub-section (2) of Section 144C of the Act that it had filed objection dated 23rd January 2024 with the DRP. The 30 days period expired on 23rd January 2024, whereas Petitioner communicated about filing of the objection with DRP only on 9th February 2024. Since the objection was not intimated to the AO within the 30 days period prescribed, the AO proceeded to pass the assessment order dated 28th February 2024 notwithstanding the objection filed by Petitioner with the DRP.

5. In our view, since Petitioner had already filed a reference raising its objections to the DRP within the 30 days period and Section 144C(4) of the Act requires the AO to pass a final order including the view expressed by the DRP, we set aside the order dated 28th February 2024 of the AO impugned in this petition. We find support for this view in ***Sulzer Pumps India Pvt. Ltd. v Deputy***

Commissioner of Income Tax, Circle 15(3)(2) & Ors.[1] We shall also observe that the AO cannot be faulted for passing the impugned order. At the same time, the AO will also have the benefits of considering the views of the DRP while passing a fresh assessment order.

6. Accordingly, Rule made absolute in terms of prayer clause (a), which reads as under:

> "(a) Issue a Writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate writ, order or direction under Articles 226 and 227 of the Constitution of India quashing the Impugned Order u/s 143(3) r.w.s. 144C dated 28 February 2024 (Exhibit G), Impugned Demand Notice u/s 156 dated 28 February 2024 (Exhibit H) and Impugned Penalty notice u/s 270A dated 28 February 2024 (Exhibit I) passed by Respondent No.1;"

7. The AO shall take further steps in the matter after the DRP passes its order on the objection filed by Petitioner, in accordance with law.

8. Petition disposed.

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

1 Writ Petition(L) No.15811 of 2021, dtd. 27th October 2021 (unreported).