IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.09.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.28381 of 2021
and
W.M.P.Nos.29963 and 29965 of 2021

Hexa Industries Private Limited,
Represented by its Director Mr.S.Sudhakaram
(Earlier known as Hexa Wind Farm Private Limited) ... Petitioner

Vs.

1.The National Faceless Assessment Centre,
Through the Principal Chief Commissioner of Income Tax,
2nd Floor, Jawarharlal Nehru Stadium,
New Delhi – 110 003.

2.The Deputy Commissioner of Income Tax,
Corporate Circle-1 (1), Chennai. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records of the first respondent in the Impugned Order dated 24.11.2021, bearing No.DIN ITBA/PNL/F/270A/2021-2022/1037174899(1) for the Assessment Year 2017-2018 passed under Section 270A of the Income Tax Act, 1961 and quash the same.

For Petitioner	:	Mr.Aditya Vohra for Mr.P.J.Rishikesh
For Respondents	:	Mr.Prabhu Mukunth Arun Kumar Junior Standing Counsel

ORDER

This Writ Petition is of the year 2021.

2. The petitioner is before this Court against the Impugned Order 24.11.2021 passed by the first respondent under Section 270A of the Income Tax Act, 1961.

3. By the Impugned Order dated 24.11.2021, the proposal contained in the Show Cause Notice dated 07.09.2021 issued under Section 270A of the Income Tax Act, 1961 has been confirmed.

4. The Impugned Order is challenged primarily on the ground that the petitioner was in appeal against the Assessment Order dated 30.12.2019 for the Assessment Year 2017-2018 and that the petitioner had unsuccessfully challenged the same before the Commissioner of Income Tax (Appeals), Chennai who by order dated 23.03.2020 had dismissed the same and further appeal is said to be pending before the Income Tax Appellate Tribunal (ITAT), "D" Bench, Chennai in I.T.A.No.753/Chny/2020.

5. Learned counsel for the petitioner submits that though the petitioner

had specifically requested for personal hearing in terms of Section 274(1) of the Income Tax Act, 1961 read with Faceless Penalty Scheme, 2021 claimed under Section 274(2) of the Income Tax Act, 1961, the respondents had proceeded to pass order on merits.

6. It is submitted that the Impugned Order has been passed in gross violation of principles of natural justice and therefore is liable to be dismissed.

7. Learned counsel for the petitioner also made submissions on merits. However, this Court is inclined to delve into the same as it could influence the appeal that is pending before the Income Tax Appellate Tribunal (ITAT), "D" Bench, Chennai in I.T.A.No.753/Chny/2020, which is likely to be heard on 26.09.2024.

8. Although the learned Junior Standing Counsel for the respondents would submit that there is no error in the Impugned Order and the writ petition is liable to be dismissed, this Court is of the *prima facie* view that the Impugned Order suffers from violation of principles of natural justice and is contrary to Section 274(1) of the Income Tax Act, 1961 read with the provisions of the

Faceless Penalty Scheme, 2021. Therefore, the Impugned Order is set aside and the case is remitted back to the respondents to pass a fresh order on merits.

9. Since the Impugned Order has already been passed, the Impugned Order is to be treated as a Draft Penalty Order which can be replied back by the petitioner. The respondents shall thereafter pass orders after hearing the petitioner as the petitioner has already made a request for personal hearing.

10. This Writ Petition stands allowed with the above observations. No costs. Connected Writ Miscellaneous Petitions are closed.

25.09.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No

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To

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C.SARAVANAN, J.

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