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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 368/2024 & CM APPL. 1722/2024

SUZUKI MOTOR CORPORATION ..... Petitioner

Through: Mr.Ajay Vohra, Sr.Adv with Mr.Neeraj Jain, Mr.Aniket D.Agrawal and Mr.Saksham Singhal, Advs.

versus

ASSISTANT COMMISSIONER OF INCOME TAX INTERNATIONAL TAX 3(1)(2) DELHI & ANR

..... Respondents

Through: Mr.Sunil Agarwal, Sr.SC, Mr.Shivansh B.Pandya, Jr.SC and Mr.Utkarsh Tiwari, Adv.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

O R D E R

% **11.01.2024**

CM APPL. 1723/2024 (Exemption)

Allowed, subject to all just exceptions.

Application is disposed of.

W.P.(C) 368/2024 & CM APPL. 1722/2024

1. This petition has been preferred seeking the following reliefs:-

> "I) issue a writ in the nature of certiorari/ mandamus or any other appropriate writ, order or direction for quashing:
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> (c) the **notice dated 31.03.2022** issued under section 148A(b);
> (d) the **order dated 28.04.2022** passed under section 148A(d),

and the consequent initiation of reassessment proceedings vide **notice dated 28.04.2022** issued under section 148 of the Income Tax Act, 1961;

in the case of the Petitioner for assessment year 2018-19, and all proceedings/ actions consequent thereto;

(II) grant ad-interim ex-parte stay on the reassessment proceedings initiated under sections 147/148 of the Act vide the impugned notice dated 28.04.2022 issued under section 148 of the Act, and/or any other proceedings initiated thereunder for the assessment year 2018-19, during pendency of the present petition;

(III) direct the Respondent No. l to place before this Hon'ble Court the complete re-assessment records/ file;

(IV) Pass such other order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

2. The challenge is essentially directed against the initiation of proceedings referable to Section 148 of the Income Tax Act, 1961 ["**Act**"] and pertaining to Assessment Year ["**AY**"] 2018-2019.

3. The record would reflect that the petitioner is stated to have been served with a notice referable to Section 148A(b) of the Act alleging the following:-

"2. <u>During the year, under consideration, the assessee i.e. M/s Suzuki Motor Corporation had received a sum of Rs. 3, 16,30,983/- from M/s Maruti Suzuki India Limited(TAN:DELL02368C) as "Fees for Technical Services (FTS)" and TDS was deducted not deducted by the Indian payer on such payments even though the consideration received by the non-resident assessee is income that is chargeable to tax in India. Thus, the aforementioned income received by the assessee has not been offered to tax, and no justification has been provided for the same.</u> Further, no ITR has been filed by the assessee for the given AY.

3. <u>The income of Rs. 3, 16,30,983/-, being income sourced in India and chargeable to tax therein, has not been offered for taxation. Therefore, the aforesaid information suggests that income chargeable to tax in the case of the assessee for the given AY 2018-19 has escaped assessment</u>."

4. In response to the aforesaid notice, the petitioner asserted that

during the AY in question, it had offered to tax income generated from Fees for Technical Services ["**FTS**"] amounting to Rs. Rs.237,44,83,894/- and which included FTS income of Rs. 112,39,00,486/- from M/s Maruti Suzuki India Limited. The petitioner also appears to have questioned the sanction as accorded under Section 151 of the Act on the ground of the same having not been communicated and that the notice itself had been issued without a valid Documentation Identification Number ["**DIN**"].

5. While dealing with the response to the aforesaid notice and framing an order purporting to be under Section 148A(d) of the Act, the Assessing Officer has principally rested its decision to initiate proceedings under Section 148 based on the following reasoning:-

> "5.1 However, the assessee has not provided the copy of the underlying agreements/contracts entered into with M/s Maruti Suzuki India Limited to substantiate its claim of having earned FTS income of Rs 112,39,00,486/- and the assessee did not submit the relevant bills/ invoices for the same. The assessee also failed to submit copies of Form 15CA, 15CB of M/s Maruti Suzuki India Limited or a confirmation from M/s Maruti Suzuki India Limited to conclusively prove that it had not received FTS income amounting to Rs 3,16,30,983/-. It is pertinent to mention that the proceedings u/s 201 in the case of M/s Maruti Suzuki India Limited vide order passed u/s 201 of the Act dated 28.12.2021 have established that M/s Maruti Suzuki India Limited made a remittance of Rs 3,16,30,983/- to the assessee, M/s Suzuki Motor Corporation, Japan without deduction of tax at source. Thus, in the absence of any supporting documentary evidences, the assesse's claims are not acceptable."

The notice under Section 148 thereafter came to be issued on 28 April 2022.

6. The initiation of proceedings was sought to be assailed by Mr. Vohra, learned senior counsel, on various jurisdictional grounds which are taken in the writ petition. It was the submission of Mr. Vohra that quite apart from a lack of valid sanction and it not being served upon

the assessee, the mentioning of a wrong DIN, the notice would also not be within the limitation prescribed under Section 149(1)(a) & Section 149(1)(b) of the Act. It was additionally contended that although the Section 148A(d) order is in turn based on an order framed under Section 201 against Maruti Suzuki India Private Limited, the said material was neither disclosed in the original notice nor was the petitioner afforded an opportunity to either furnish an explanation in respect thereof or establish that the same cannot be subjected to tax.

7. However, it was not disputed before us that the remittance of Rs. 3,16,30,983/- which forms the subject matter of the impugned notices did not form part of the FTS income earned from Maruti Suzuki India Limited and which was disclosed in the return of the petitioner and had been pegged at Rs.112,39,00,486/-.

8. Notwithstanding the issues so raised, we find no justification to entertain the writ petition at this stage especially since the initial notice under Section 148A(b) is dated 31 March 2022 and the order referable to Section 148A(d) was passed way back on 28 April 2022. We are constrained to observe that the challenge at this stage would also have to be evaluated bearing in mind the time frames for completion of reassessment proceedings as laid in place in terms of Section 153(2). It is these aspects which convince us to observe and hold that there would exist no justification to entertain the belated challenge.

9. Accordingly, while we dismiss the writ petition, we reserve all rights and contentions available to the writ petitioner to be urged and addressed before the Assessing Officer as well as to take such appropriate remedies upon conclusion of the reassessment proceedings

as may be permissible in law.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

JANUARY 11, 2024/_neha_