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

\+ W.P.(C) 6036/2021

DIGISPICE TECHNOLOGIES LIMITED (EARLIER KNOWN AS SPICE MOBILITY LIMITED) ..... Petitioner

Through: Ms. Kavita Jha, Mr. Vaibhav Kulkarni, Mr. Himanshu Aggarwal, Advs.

versus

ASSISTANT COMMISSIONER OF INCOME TAX & ORS.

..... Respondent

Through: Mr. Sanjeev Menon, Adv. for Mr. Zoheb Hossain, SSC

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

**<u>O R D E R</u>**

% **01.03.2024**

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

> "a) writ in the nature of mandamus, certiorari, or any other appropriate writ, direction or order directing Respondent No.1 to process the revised return of income for assessment year 2018-19 filed by the Petitioner giving effect to the comprehensive scheme of arrangement approved by the NCLT vide order dated 20.05.2019 and also to release the consequent refund due to the petitioner;
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> b) grant ad-interim ex-parte relief in terms of prayer (a) above to take on record the revised return of income subject to the disposal of the present writ petition;
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> c) 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 principal dispute emanates from a purported failure and default on the part of Spice Mobility Limited **["SML"]** to abide by the

provisions contained in Section 139 of the Income Tax Act, 1961 ["**Act**"] and file a Return of Income **["ROI"]** relevant for Assessment Year ["**AY**"] 2018-19 within the time frame statutorily stipulated. SML is stated to have ultimately amalgamated with the current petitioner pursuant to a scheme of merger which came to be sanctioned by the National Company Law Tribunal **["NCLT"]**.

3. For the consideration of the limited issue which arises in the present writ petition, we deem it apposite to extract the following parts from that scheme:-

> " **11. TREATMENT OF TAXES/DUTIES/CESS ETC.**
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> xxx xxx xxx
>
> 11.2 All taxes of any nature, duties, cess or any other like payment or deductions made by SDL in relation to DTS Business Undertaking to any statutory authorities such as income tax, goods and service tax etc. or any tax deduction or collection at source, relating to the period after the Appointed Date up to the Effective Date shall be deemed to have been on account of or paid by SML and the relevant authorities shall be bound to transfer to the account of and give credit for the same to SML upon the passing of the orders on this Scheme by NCLT(s) and upon relevant proof and documents being provided to the said authorities.
>
> 11.3 Upon the Scheme becoming effective, SML is also expressly permitted to revise income tax, withholding tax, goods and service tax and other statutory returns and filings under the tax laws notwithstanding that the period of filing/ revising such returns may have lapsed pursuant to the provisions of this Scheme."

4. Prior to the sanction of the scheme, SML is stated to have submitted a ROI for the AY in question, albeit without an audit report being appended thereto. The respondents also appear to have placed that entity on notice of the shortcoming in the ROI which was filed. It is alleged that neither were those notices attended to nor were the shortcomings rectified.

5. Ultimately, the present petitioner came to submit a ROI

pursuant to the provisions contained in Sections 170 and 170A of the Act and in order to apprise the respondents of the effect of the scheme of merger which had since then been sanctioned. The respondents have refused to accept that ROI proceeding on the basis that consequent to a failure on the part of the petitioner to cure the omissions which existed in the original ROI which was filed, it was the provisions of Section 139(9) of the Act which would apply and thus no further ROIs in respect of that entity could be entertained.

6. Mr. Menon had also drawn our attention to the non-obstante clause which stands embodied in sub-section (9) of Section 139 to submit that the said provision not only provides for when the assessee will be treated to be in default but also overrides the other provisions that may be contained in the Act. According to learned counsel, if the petitioners were to be permitted to place a revised ROI including therein the expenditure and income attributable to the amalgamating entity, it would clearly amount to condoning the delay as well as the penal consequences which ensue.

7. We find ourselves unable to sustain the stand as taken by the respondents for the following reasons. The petitioner has proceeded to file its amended ROI not in order to overcome the default or the omissions which existed in the original ROI filed by the amalgamating entity. Their obligation to file a ROI flows from Section 170 of the Act and which mandates that upon succession to businesses, the successor is bound to furnish a ROI so as to account for the income and expenditure of those entities to which it succeeds and takes over. The aforesaid statutory obligation stands more firmly amplified consequent to the introduction of Section 170A and which, although did not exist in AY 2018-19, gives a clear indication of the legislative

intent of revised ROIs being filed in order to give effect to and capture all aspects of a scheme of arrangement that may come to be sanctioned.

8. In view of the aforesaid facts and in our considered opinion, since the obligation to file a ROI came to be imposed upon the petitioner pursuant to the sanction of the scheme and which required it to also furnish all particulars and details in respect of the merging entity, the ROI is liable to be accepted and processed accordingly.

9. All that we deem appropriate to observe is that since there appears to have been a manifest default on the part of SML to comply with the provisions of Section 139 and as a consequence of which sub-section (9) stood attracted, the interest which can possibly be claimed by the writ petitioner and if otherwise statutory payable, shall be computed only from the date of the filing of the ROI on 01 November 2019.

10. Accordingly, we allow the instant writ petition and direct the respondents to take on board the revised ROI. It shall be open to the respondents to proceed further in accordance with law.

11. The writ petition shall stand disposed of on the aforesaid terms.

**YASHWANT VARMA, J.**

**PURUSHAINDRA KUMAR KAURAV, J**

**MARCH 01, 2024/***neha*