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

\+ W.P.(C) 7207/2019

VEDANTA LIMITED (SUCCESSOR TO CAIRN INDIA LIMITED ..... Petitioner

Through: Mr. Ajay Vohra, Sr. Adv. with Mr. Aditya Vohra & Mr. Samarth Chaudhari, Advs.

versus

ASSISTANT COMMISSIONER OF INCOME-TAX CIRCLE 26(1) ..... Respondent

Through: Mr. Shlok Chandra, SSC with Ms. Madhavi Shukla, Mrs. Priya Sarkar, JSCs & Mr. Sundarshan Roy, Adv.

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

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

% **09.05.2024**

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

> "a) Writ of certiorari, prohibition, mandamus or any other appropriate writ, direction or order quashing the impugned order dated 31.05.2019 passed by the Respondent under section 271(1)(c) of the Act in respect of assessment year 2014-15;
>
> b) A writ of and/ or order and/ or direction in the nature of prohibition commanding the Respondent to forebear from giving effect to and/ or taking any step whatsoever pursuant to and/ or furtherance of the impugned order dated 31.05.2019 passed under section 271(1)(c) of the Act for the assessment year 2014-15;
>
> c) Direction granting ad interim stay on the operation of the impugned order and all proceedings initiated pursuant thereto, pending disposal of the present writ petition;
>
> d) 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 solitary question which arises for our consideration is the validity of the imposition of penalty under Section 271(1)(c) of the Income Tax Act, 1961 ["**Act**"]. It becomes pertinent to note that the levy of penalty itself was predicated upon a final assessment which was made in the case of the writ petitioner on 28 November 2018. That order of assessment was ultimately quashed and set aside by the Income Tax Appellate Tribunal ["**ITAT**"] in terms of its judgment rendered on 04 February 2019. The order impugned before us undisputedly came to be passed thereafter and on 31 May 2019.

3. It is manifest that the same came to be made even when the order of assessment did not subsist. In view of the aforesaid, we find ourselves unable to sustain the order impugned in the instant writ petition.

4. We, however, note that the order of the ITAT dated 04 February 2019 presently forms subject matter of ITA No. 873/2019. In view of the aforesaid, we may only observe that in case the respondents here were to succeed in that appeal, appropriate directions with respect to whether penalty would be leviable in the facts and circumstances of the case can always be re-examined.

5. Subject to the aforesaid observation, we allow the instant writ petition and set aside the order dated 31 May 2019 passed under Section 271(1)(c) of the Act. We reserve the right of the respondents to address all submissions in ITA No. 873/2019.

YASHWANT VARMA, J

PURUSHAINDRA KUMAR KAURAV, J

MAY 9, 2024/kk