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

\+ W.P.(C) 13121/2019 & CM APPL 15145/2024

HLS ASIA LIMITED ..... Petitioner

Through: Mr. Himanshu S. Sinha, Mr. Bhuwan Dhoopar and Mr. Parash Biswal, Advocates

Versus

ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE II(1) DELHI ..... Respondent

Through: Mr. Sanjay Kumar, Ms. Easha, Ms. Hemlata Rawat, SCs.

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

O R D E R

% 12.03.2024

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

> "(I) issuance of writ of prohibition restraining the Respondent from deciding the issue of admissibility of deduction u/s 32AC of the Act which is pending before the Authority for Advance Rulings and from passing the final assessment order u/s 143(3) of the Act;
>
> (II) issuance of writ of certiorari quashing the Impugned Notice dated 7 December 2019;
>
> (III) For ad-interim reliefs as the Court may deem fit;
>
> (IV) For the costs of this Petition; and
>
> For such further and other reliefs, as this Hon'ble Court may deem fit, proper and appropriate, in the nature and circumstances of this case".

2. The petitioner was constrained to approach this Court since pursuant to a Show Cause Notice ["**SCN**"] dated 7 December 2019, the Assessing Officer **["AO"]** proposed to consider the aspect of deduction of Rs.6,57,24,000/- under Section 32AC of the Income Tax Act, 1961 **["Act"]**.

3. The petitioner has contended that this very issue was pending consideration before the Authority for Advance Rulings ["**AAR**"], which has now been replaced by the Board for Advance Rulings ["**BFAR**"] and consequently the AO would have no jurisdiction to proceed.

4. We note from the stand which was taken in the counter affidavit that according to the respondent, the AO did not have any intent to adjudicate the issue pending before the BFAR or to conclude assessment proceedings. The submission in that sense is in recognition of the statutory position which would prevail in terms of Section 245RR of the Act. The relevant extract of the counter affidavit is reproduced herein below:-

> "(d) It was not the intent of the Respondent to adjudicate the pending issue before the Authority for Advance Rulings and to conclude the assessment proceedings. Rather the submissions of the Petitioner were duly considered, and upon being satisfied about the pendency of the matter before Hon'ble AAR, Respondent did not proceed to decide on the issue, keeping the assessment proceedings in abeyance as per the provisions of Section 153 read with Section 245RR of the Act."

5. In view of the aforesaid and since the issue of deductions under Section 32AC of the Act is pending consideration before the BFAR, we allow the writ petition and set aside paragraph 1 of the notice dated 7 December 2019. All other issues are left open for the consideration

of the AO and would be subject to the outcome of the matter pending before the BFAR.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MARCH 12, 2024
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