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

\+ **W.P.(C) 16217/2024 & CM APPL. 68142-43/2024**

SUZUKI MOTOR CORPORATION .....Petitioner

Through: Mr Ajay Vohra, Sr Advocate with Mr Neeraj Jain, Mr Anshul Sachar and Mr Tavish Verma, Advocates.

versus

ASSISTANT COMMISSIONER OF INCOME TAX .....Respondent

Through: Mr Sunil Aggarwal, SSC, Mr Shivansh B Pandya, Mr Viplav Acharya, JSCs and Mr Utkarsh Tiwari, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

O R D E R

% **22.11.2024**

1. Issue notice.

2. The learned counsel for the Revenue accepts notice.

3. The petitioner, Suzuki Motor Corporation (hereafter *Assessee*), has filed the present petition, *inter alia,* impugning the assessment order dated 22.05.2024 (hereafter *the impugned order*) passed under Section 147 read with 144C(3) of the Income Tax Act, 1961 (hereafter *the Act*) as well as the notice dated 22.05.2024 (hereafter *the impugned notice*) issued under Section 156 of the Act.

4. The Assessee had filed its Income Tax Return (ITR) for the assessment year (AY) 2018-19 on 30.11.2018 declaring an income of

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₹45,57,35,07,705/- which was processed under Section 143(1) of the Act. However, thereafter, the Assessee received a notice dated 31.03.2022 issued under Section 148A(b) of the Act calling upon the Assessee to show cause why its assessment for the AY 2018-19 not be reopened.

5. The Assessee filed objections to the said notice on 22.04.2022, however, the same was not accepted and the assessing officer (AO) passed an order dated 28.04.2022 under Section 148A(d) of the Act holding that it was a fit case for reopening the assessment for the AY 2018-19. The AO also issued notice under Section 148 of the Act for initiating the reassessment proceedings.

6. The Assessee states that the draft assessment order dated 28.03.2024 was passed under Section 144C(1) of the Act whereby the sales of spare parts and capital goods by the Assessee to its associate entities in India, were sought to be brought in the net of tax as attributable to the Assessee's permanent establishment (PE) in India.

7. The Assessee filed its objection in the Form No. 35A dated 26.04.2024 before the Dispute Resolution Panel (hereafter *the DRP*). The said objections are pending and the Assessee received notice dated 02.11.2024 from the DRP scheduling the hearing on 27.11.2024.

8. Notwithstanding, the Assessee's objection were pending before the DRP, the AO issued a notice dated 18.07.2024 under Section 221(1) of the Act indicating that a total demand of ₹6,07,24,23,190/- was pending for the AY 2018-19. According to the Assessee, no such demand could be raised as the final assessment order was not passed. However, on making further enquiries, it was found that the impugned order was passed by the AO and was uploaded on the portal along with the copy of impugned notice under

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Section 156 of the Act. The Assessee also contends that no real time alert was sent to its registered email ID.

9. Mr Aggarwal, the learned counsel appearing for the Revenue submits that the previous AO has passed the assessment order as the information regarding filing of the objections before the DRP was not furnished by the Assessee to the AO.

10. This is stoutly contested by Mr Vohra, the learned senior counsel appearing on behalf of the Assessee. He also points out that in fact the Assessee had informed the AO regarding filing the objections before the DRP but he had not acknowledged the same.

11. It is not necessary for this court to examine this controversy as it is an admitted position that notwithstanding, the lack of information with the AO, if an objection has been filed and is pending before the DRP, the assessment order passed in ignorance of the said objection is required to be set aside.

12. In view of the above, the present petition is allowed. The notice under Section 221(1) of the Act in respect of the AY 2018-19; the impugned order dated 22.05.2024; and the impugned notice under Section 156 of the Act are set aside.

13. The petition is allowed in the aforesaid terms. Pending applications also stands disposed of.

VIBHU BAKHRU, J

SWARANA KANTA SHARMA, J

NOVEMBER 22, 2024

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Click here to check corrigendum, if any

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