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

\+ **W.P.(C) 16244/2024 & CM APPL. 68356-57/2024**

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 143(3) 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) 2022-23 declaring an income of ₹46,37,40,26,590/-. The Assessee received a notice dated 31.05.2023 issued under Section

143(2) of the Act for the purposes of assessing the petitioner's taxable income. Thereafter, a notice under Section 142(1) of the Act was issued along with a questionnaire.

5. The Assessing Officer (hereafter *AO*) issued the draft assessment order dated 19.03.2024 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 being attributable to the Assessee's permanent establishment (PE) in India.

6. The Assessee filed its objection in the Form No. 35A dated 18.04.2024 before the Dispute Resolution Panel (hereafter *DRP*). The Assessee claims that on the same date, the Assession also filed a copy of the objections in the office of the AO.

7. 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 ₹98,50,41,470/- was pending for the AY 2022-23. 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 the impugned notice under Section 156 of the Act. The Assessee also contends that no real time alert was sent to its registered email ID.

8. 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.

9. 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.

10. It is not necessary for this court to examine this controversy in further detail as it is not disputed 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.

11. In view of the above, the present petition is allowed. The notice under Section 221(1) of the Act in respect of the AY 2022-23; the impugned order dated 22.05.2024; and the impugned notice under Section 156 of the Act, are set aside.

12. 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