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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16-06-2026

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THE HON'BLE MR JUSTICE SENTHILKUMAR RAMAMOORTHY

WP No. 12769 of 2022
and WMP.No.12227 of 2022

Agniti Industrial Parks Pvt. Ltd.
Rep. by its Vice President Mr.M.Suresh Kumar,
Meridian Housed, III Floor, No.121/3, TTK Road,
Alwarpet, Chennai-600 018.

..Petitioner

Vs

1. The Deputy Commissioner of Income Tax
Corporate Circle 3(1), 121, Mahatma Gandhi
Road, Nungambakkam, Chennai-600 034.

2. Radhakrishnan Dharmarajan
(IBBI Reg. No. IBBI/IPA-001/IP-P00508/2017-
18/10909), C/o RDH and Company D-3,
Triumph Apartments, 114, Jawaharlal Nehru
Salai, Arumbakkam, Chennai-600 016

Liquidator, Winwind Power Energy Private
Ltd., Having registered office at 322/10, Vallal
RCK Nagar, Vengal Village,
Tiruvallur Taluk and District.

3. Additional/Joint/Deputy/Assistant
Commissioner of Income Tax/Income Tax
Officer, National e-Assessment Centre,
Income Tax Department, Delhi.

..Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari calling for the records of the 1st respondent pertaining to Order bearing DIN No ITBA / PNL / F / 270A / 2021-22 / 1041971423(1) dt. 29.03.2022 issued by 1st Respondent, and quash the same.

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For Petitioner:	Mr. Srinath Sridevan, Senior Counsel for Ms. Anita Suresh
For R1 & R3:	Mr. A.P.Srinivas, Senior Standing Counsel Mr. A.N.R. Jayaprathap, Jr. Standing Counsel

ORDER

The predecessor in interest of the petitioner was called Winwind Power Energy Private Limited. Corporate Insolvency Resolution Proceedings (CIRP) commenced in respect of said entity on 28.09.2018. The interim resolution professional filed the return of income for assessment year 2018 – 2019 on 26.10.2018 offering nil income to tax. The case was selected for scrutiny and assessment order dated 23.04.2021 was issued under Section 144 read with Section 144B of the Income Tax Act, 1961 (the I-T Act). In such order, the total income was determined in a sum of Rs.26,68,31,481/-.

2. Resorting to Section 270A of the I-T Act, show cause notice dated 07.03.2022 was issued for imposing penalty for under-reporting of income. The order impugned herein was issued pursuant thereto.

3. Mr. Srinath Sridevan, learned senior counsel for the petitioner, challenges the impugned order on about three grounds. He submits that a rectification petition under Section 154 of the I-T Act was filed on 24.11.2021

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and that rectification order dated 29.01.2022 was issued concluding that the assessed income is nil. He also draws reference to a separate rectification order dated 09.11.2022 reaching the same conclusion. As a consequence, he contends that there was no under-reporting of income and that penalty cannot be imposed under Section 270A under such circumstances.

4. The second contention is that penalty proceedings were initiated under show cause notice dated 07.03.2022, which is subsequent to liquidation order dated 08.08.2019. Relying on sub-section (5) of Section 33 of the Insolvency and Bankruptcy Code, 2016 (the IBC), he contends that no proceedings may be initiated against an entity in liquidation after the order of liquidation. The third contention is that the distribution of assets in liquidation is to be carried out in accordance with Section 53 of the IBC. Because the Income Tax Department did not lodge a claim in terms thereof, he submits that the impugned order cannot be sustained. He relies on the judgment of a Division Bench of the Delhi High Court in *TUF Metallurgical Pvt. Ltd. v. Union of India and another, 2023 SCC OnLine Del 7877* in the context of CIRP. He also relies on the judgment of the Supreme Court in *Sundaresh Bhatt, Liquidator of ABG Shipyard v. Central Board of Indirect Taxes and Customs, (2022) SCC OnLine SC 1101* regarding the interplay between the IBC and the Customs Act with particular reference to sub-section (5) of Section 33 of the IBC.

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5. In response to these contentions, Mr. A.P.Srinivas invited my attention to the impugned penalty order. He points out that the petitioner failed to participate in proceedings culminating in the assessment order. Therefore, he contends that the imposition of penalty under Section 270A was the logical extension thereof.

6. The liquidation order in respect of Winwind Power Energy Private Limited was issued on 08.08.2019. After selecting the petitioner's return of income for scrutiny, the assessment order was issued on 23.04.2021. Penalty proceedings were initiated thereafter by issuing show cause notice dated 07.03.2022. Even prior thereto, upon the petitioner applying for rectification under Section 154 of the I-T Act, rectification order dated 29.01.2022 had been issued. In such order, after taking note of the assessed income of Rs.26,68,31,480/- and the current year and brought forward losses of Rs.8,95,16,542/- and Rs.17,73,14,938/-, respectively, the assessed income was recorded as Rs.0.

7. The impugned penalty order notices the rectification order dated 29.01.2022. Nevertheless, a conclusion is drawn that there was under-reporting of income.

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8. Section 270A(1) reads as under:

> *"270A. (1) The Assessing Officer or [the Joint Commissioner (Appeals) or] the Commissioner (Appeals) or the Principal Commissioner or Commissioner may, during the course of any proceedings under this Act, direct that any person who has under-reported his income shall be liable to pay a penalty in addition to tax, if any, on the under-reported income."*

From the text of sub-section (1), it is evident that under-reporting of income is a *sine qua non* for initiation of penalty proceedings under Section 270A. In light of the rectification orders referred to earlier, it cannot be said that there was any under-reporting of income by the petitioner. As a corollary, penalty proceedings under Section 270A cannot be sustained. Solely on this ground, the impugned penalty order is liable to be set aside.

9. Learned senior counsel for the petitioner also assails the impugned order on the ground that proceedings cannot be initiated against an entity in liquidation as per sub-section (5) of Section 33 of the IBC. *Prima facie*, there is merit in this contention. Given the conclusion reached earlier with regard to non-sustainability of proceedings under Section 270A, I am not inclined to dilate further on this issue and record definitive conclusions.

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SENTHILKUMAR RAMAMOORTHY, J.

KJ

10. For reasons set out above, the impugned penalty order dated 29.03.2022 is set aside. The writ petition is disposed of on the above terms. There will be no order as to costs. Consequently, connected miscellaneous petition is closed.

16-06-2026

Index : Yes/No

Neutral Citation : Yes/No

KJ

To

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