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

\+ W.P.(C) 15119/2024 & CM APPL. 63387/2024

AIRPAY MONEY PRIVATE LIMITED .....Petitioner

Through: Mr. Ved Jain, Mr. Nischay Kantoor, Ms. Vandana Kothari & Mr. Sparsh Kapoor, Advocates.

versus

DEPUTY COMMISSIONER OF INCOME TAX CIRCLE 43 1 DELHI & ANR. .....Respondents

Through: Mr. Sunil Agarwal, SSC with Ms. Monica Benjamin, Mr. Gibran Naushad, JSCs.

CORAM:
HON'BLE MR. JUSTICE DINESH MEHTA
HON'BLE MR. JUSTICE VINOD KUMAR

O R D E R

% **27.04.2026**

1. By way of present writ petition, the petitioner has challenged the order dated 27.09.2024, whereby petitioner's application under Section 270AA of the Income Tax Act, 1961 *(hereinafter referred to as 'the Act of 1961')* was rejected. Petitioner has also challenged the order of even date whereby a penalty of Rs. 42,59,632/- under Section 270A was imposed.

2. Learned counsel for the petitioner invited Court's attention towards the order passed on 27.09.2024 and submitted that the respondents even in their reply have not been able to point out as to how the petitioner had misrepresented the facts and misreported the income.

3. He argued that the petitioner had disclosed all facts and material information and had taken a particular view, which did not find favour with respondents and simply because the Assessing Officer did not agree with

petitioner's stand, it cannot be said that the petitioner had misreported the income.

4. Mr. Sunil Agarwal, learned Senior Standing Counsel, on the other hand argued that the Assessing Officer had committed no error of law in rejecting petitioner's application under Section 270AA of the Act of 1961.

5. Heard learned counsel for the parties and perused the record.

6. Section 270AA of the Act of 1961 provides that the Commissioner of Income Tax can grant immunity to an assessee from imposing penalty under Section 270A, or under Section 276C or Section 276CC on fulfilling the following three conditions:

(i) the tax and interest payable as per the assessment order or reassessment order has been paid;

(ii) an application to the assessing officer seeking immunity from imposition of penalty is filed within a month from the end of the month in which the order is passed;

(iii) the circumstances as provided under sub-section (9) of Section 270A of the Act of 1961 do not exist.

7. Sub-section (9) of Section 270A of the Act of 1961 reads as under:

> *"(9) The cases of misreporting of income referred to in sub-section (8) shall be the following, namely:—*
>
> *(a) misrepresentation or suppression of facts;*
>
> *(b) failure to record investments in the books of account;*
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> *(c) claim of expenditure not substantiated by any evidence;*
>
> *(d) recording of any false entry in the books of account;*
>
> *(e) failure to record any receipt in books of account having a bearing on total income; and*
>
> *(f) failure to report any international transaction or any transaction deemed to be an international transaction or any specified domestic transaction, to which the provisions of Chapter X apply."*

8. Having gone through the above referred provisions and facts of the

case, we are of the view that the assessee has neither misrepresented/suppressed the facts nor has it concealed any material particulars so as to suggest misreporting.

9. The order impugned passed by the Assessing Officer under Section 270AA of the Act of 1961 is therefore, clearly contrary to facts and law and against the spirit of the statutory provisions, which appears to have been enacted with a view to reduce the litigation.

10. The assessee has volunteered rather paid tax and interest within thirty days of the demand having been raised. We are of the considered view that the Assessing Officers should not consider provisions of penalty to be a source of revenue. The penalty provisions in taxing statute are provided in order to deter the assessees from indulging in evasion or misreporting of income or in other words, when the assessee has either not disclosed the facts truly or has misrepresented the facts with the intention/*mens rea* to evade tax.

11. In absence of any *mens-rea* or a finding regarding contumacious conduct of the assessee, the Assessing Officer cannot impose penalty.

12. In view of the discussion, petitioner's application under Section 270AA dated 02.04.2024 is hereby allowed and consequently the impugned order (annexure P-12) dated 27.09.2024 is also quashed.

13. The writ petition is allowed alongwith pending applications.

DINESH MEHTA, J.

VINOD KUMAR, J.

APRIL 27, 2026/*nk*