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

\+ ITA 330/2024

THE PR. COMMISSIONER OF INCOME TAX -CENTRAL -1 .....Appellant

Through: Mr. Ruchir Bhatia, SSC with Mr. Anant Mann & Mr. Pratyaksh Gupta, JSCs.

versus

ANSAL PROPERTIES AND INFRASTRUCTURE LTD. .....Respondent

Through: Mr. Tapas Misra, Adv.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

O R D E R

% 09.07.2024

CM APPL. 37815/2024 (14 Days Delay in filing) & 37816/2024 (240 Days Delay in Refiling)

1. Bearing in mind the disclosures made, the delay of 14 days in filing and 240 days in re-filing the appeal are condoned.

2. Applications stand disposed of.

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3. On hearing learned counsels for parties, we find that the issues which are sought to be raised here stand concluded against the appellant in light of our judgment rendered in **GE Capital US Holding Inc vs. Dy. Commissioner of Income Tax (International Taxation) Circle 1(13)(1)**, **New Delhi & Ors.** [2024:DHC:4535:-DB] where while dealing with the necessity of referring to the 'specific limb' of the penal provision under which penalty proceedings were

proposed to be initiated, we had held as follows:

> "**22.** As is evident from a reading of Section 270A(1), a person would be liable to be considered to have under-reported its income if the contingencies spoken of in clauses (a) to (g) of Section 270A(2) were attracted. In terms of Section 270A(3), the under-reported income is thereafter liable to be computed in accordance with the stipulations prescribed therein. However, the subject of misreporting of income is dealt with separately in accordance with the provisions comprised in sub-sections (9) and (10) of Section 270A. It is thus evident that both under-reporting as well as misreporting are viewed as separate and distinct misdemeanors.
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> **23.** However, and as we read the orders of assessment which were passed, the same carry no findings which may be viewed as indicative of the contingencies spelt out in clauses (a) to (f) of Section 270A(9) being attracted. In our considered opinion, in the absence of the AO having specified the transgression of the petitioner and which could be shown to fall within the ambit of sub-section (9) of Section 270A, proceedings for imposition of penalty could not have been mechanically commenced.
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> **24.** Notwithstanding the above, we note that the SCNs' which came to be issued for commencement of action under Section 270A were themselves vague and unclear. This since they failed to specify whether the petitioner was being charged with under-reporting or misreporting of income. The aforesaid aspect assumes added significance bearing in mind the indisputable position that a prayer for immunity could have been denied in terms of Section 270AA(3) only if it were a case of misreporting. The SCNs' failed to indicate the specific charge which was sought to be laid against the petitioner. This, since they sought to invoke both sub-sections (2) as well as sub-section (9) of Section 270A. There was thus an abject failure on the part of the respondents to indicate the branch of Section 270A which was sought to be invoked. The SCNs' would thus clearly fall foul of the principles which had been enunciated in *Minu Bakshi* and *Schneider Electric*.
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> **25.** Turning then to Section 270AA, we find that sub-section (3) of that provision requires the AO to confer consideration on the following three aspects: -
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> (a) Whether the conditions precedent specified in sub-section (1) of Section 270AA have been complied with?
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> (b) The period for filing an appeal under Section 249(2)(b) having passed.
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> (c) The subject matter of penalty not falling within the ambit of Section 270A (9).

26. Since an application for grant of immunity cannot possibly be pursued unless the assessee complies with clauses (a) and (b) of Section 270AA (1), the observation of the respondent that mere payment of demand would not lead to a prayer for immunity being pursued is wholly unsustainable.

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29. Since there was a clear and apparent failure on the part of the respondents to base the impugned proceedings on a contravention relatable to Section 270A (9), the application for immunity could not have been rejected. As was noticed hereinabove, neither the AO nor the impugned SCNs' laid an allegation which could be said to be reflective of the petitioner having been found to have violated Section 270 A (9). In fact, the notices themselves sought to take a wholly ambivalent stance while alleging that the petitioner had indulged in "underreporting/misreporting". We thus have no hesitation in holding that the impugned SCNs' are rendered unsustainable on this short ground alone.

30. The importance of clarity and comprehensiveness which must imbue show cause notices came to be duly emphasised by us in our decision in **Puri Constructions (P) Ltd. Vs. CIT**:-

> "**78.** The requisites of a valid show-cause notice were lucidly explained by the Supreme Court in *Gorkha Security Services v. Government (NCT of Delhi)* as under: —
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> > "Contents of the show-cause notice
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> > 21. The central issue, however, pertains to the requirement of stating the action which is proposed to be taken. The fundamental purpose behind the serving of show-cause notice is to make the noticee understand the precise case set up against him which he has to meet. This would require the statement of imputations detailing out the alleged breaches and defaults he has committed, so that he gets an opportunity to rebut the same. Another requirement, according to us, is the nature of action which is proposed to be taken for such a breach. That should also be stated so that the noticee is able to point out that proposed action is not warranted in the given case, even if the defaults/breaches complained of are not satisfactorily explained. When it comes to blacklisting, this requirement becomes all the more imperative, having regard to the fact that it is harshest possible action.
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> **79.** Similar observations find place in *UMC Technologies Pvt. Ltd. v. Food Corporation of India*:
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> > "13. At the outset, it must be noted that it is the first principle of civilised jurisprudence that a person against whom any action is sought to be taken or whose right or interests are being affected should be given a reasonable opportunity to defend himself. The basic principle of

> natural justice is that before adjudication starts, the authority concerned should give to the affected party a notice of the case against him so that he can defend himself. Such notice should be adequate and the grounds necessitating action and the penalty/action proposed should be mentioned specifically and unambiguously. An order travelling beyond the bounds of notice is impermissible and without jurisdiction to that extent. This court in Nasir Ahmad v. Custodian General, Evacuee Property- has held that it is essential for the notice to specify the particular grounds on the basis of which an action is proposed to be taken so as to enable the noticee to answer the case against him. If these conditions are not satisfied, the person cannot be said to have been granted any reasonable opportunity of being heard."
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> **80**. The reliance which is placed by Mr. Hossain on the decisions in *Isha Beevi v. TRO* and *CIT v. Rajinder Nath* is clearly misconceived. We note that in Isha Beevi, the writ petitioner had sought the issuance of a writ of prohibition seeking quashing of notices that were impugned. It was in the aforesaid context and the prerequisites of a writ of prohibition that the Supreme Court observed that the mere mentioning of a wrong provision would not justify the issuance of that prerogative writ and more so where the writ petitioner had failed to establish a total absence of jurisdiction.\
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> **xxxx xxxx xxxx**
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> **83**. The principle of a power otherwise inhering or existing and not being impacted by the mere mention of a wrong provision is one which we apply to ratify, save and uphold a decision which is otherwise found to be valid and sustainable. We would be wary of either readily or unhesitatingly adopting or invoking that precept at the stage of a show-cause notice especially where the noticee is left to fathom which of the more than fifty variable obligations it is alleged to have violated."

31. We are further constrained to observe that even the assessment orders fail to base the direction for initiation of proceedings under Section 270A on any considered finding of the conduct of the petitioner being liable to be placed within the sweep of sub-section (9) of that provision. The order of assessment as well as the SCNs' clearly fail to meet the test of —"specific limb" as propounded in *Minu Bakshi* and *Schneider Electric*. A case of misreporting, in any case, cannot possibly be said to have been made out bearing in mind the fact that the petitioner had questioned the taxability of income asserting that the same would not constitute royalty. The issue as raised was based on an understanding of the legal regime which prevailed. The contentions addressed on that score can neither be said to be baseless nor specious. In fact, that stand as taken by the petitioner was based on a judgment rendered by the jurisdictional High Court which was indisputably binding upon the AO who, for reasons unfathomable, thought it fit to base its decision on a judgment rendered by the Karnataka High Court. The AO, it would be pertinent to recall, chose to distinguish the

judgment of the Supreme Court in *Engineering Analysis* itself. In any event, the position which the petitioner sought to assert and canvass clearly stood redeemed in light of the decision rendered by the Supreme Court.

32. Undisputedly, the petitioner had duly complied with the statutory pre-conditions set out in Section 270AA(1). It was thus incumbent upon the respondent to have come to the firm conclusion that the case of the petitioner fell in the category of misreporting since that alone would have warranted a rejection of its application for immunity. On an overall conspectus of the aforesaid, we come to the firm conclusion that the impugned orders would not sustain."

4. Consequently, and following the aforesaid decision, we find no merit in the instant appeal which shall stand dismissed.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

JULY 9, 2024/kk