


HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Civil Writ Petition No. 10198/2023

Chambal Fertilizers and Chemicals Limited, CFCL Complex Gadepan, Gadepan - 325208, Rajasthan through its authorised Representative Anuj Jain, S/o Mr. JBK Jain, aged about 59 years, R/o Flat No. 303, Rainbow Apartments, Sector 43, Gurgaon, Haryana- 122009

----Petitioner

Versus

1. Office of the Principal Commissioner of Income Tax, Aaykar Bhawan, Subcity Centre, Savina, Udaipur - 313001, Rajasthan.
2. Office of the Deputy Commissioner of Income Tax, DCIT/ACIT, Central Revenue Building, Rawat Bhata Road, Kota - 324009, Rajasthan.

----Respondents

For Petitioner(s) : Mr. Sanjay Jhanwar, Sr. Advocate assisted by Ms. Vrinda Lakhotia, Mr. Rajat Sharma & Mr. Aryan Singh Chouhan.

For Respondent(s) : Mr. Shantanu Sharma with Ms. Bhawana Laddha.

HON'BLE MR. JUSTICE ARUN BHANSALI
HON'BLE MRS. JUSTICE SHUBHA MEHTA

Order

04/01/2024

1. This writ petition has been filed by the petitioner aggrieved of order dated 13.03.2023 (Annex.14) passed by the Principal Commissioner of Income Tax, Udaipur whereby revision petition filed by the petitioner under Section 264 of the Income Tax Act, 1961 ('the Act') has been rejected.
2. The petitioner had filed its original return of income under Section 139 (1) of the Act on 30.11.2018 for the Assessment Year

2018-19 and revised return of income on 29.03.2019 under Section 139 (5) of the Act. The case of the petitioner was selected for complete scrutiny and an exhaustive list of issues was communicated by notice under Section 164 (2) of the Act on 22.09.2019. During the course of scrutiny, various notices under Section 142 (1) of the Act were issued and replies to the same were submitted by the petitioner.

3. It is claimed that during the course of scrutiny proceedings, the petitioner realized that 'provision for doubtful GST input tax credit' amounting to Rs.16,30,91,496/- had been inadvertently merged with another expense account and mistakenly claimed as expenses under the IT provisions. Accordingly, the said amount was suo moto surrendered by the petitioner by revising its return of income and adding back the amount 'provision for doubtful GST input tax credit', to the total income. The said aspect was communicated vide letter dated 24.02.2021 alongwith submission of revised computation.

4. The assessment order (Annex.6) under Section 143 (3) of the Act was passed by the National E-Assessment Centre ('NeAC') making only addition of suo moto surrendered amount of Rs.16,30,91,496/-, however, it was observed in the order that the penalty under Section 270A of the Act is imposed for misreporting of the income.

5. The petitioner filed an application under Section 270AA of the Act against the penalty order before the Deputy Commissioner, which came to be rejected by order dated 27.07.2021 (Annex.9).

6. The petitioner challenged the order of rejection by filing revision petition under Section 264 of the Act, *inter-alia*, on the ground that no opportunity of hearing was provided to the petitioner, which was in non-compliance of Section 270AA of the Act and that the order rejecting the application did not specify how there was misreporting of the income when the amount was disclosed by the petitioner on its own volition and that the case of the petitioner did not fall in any of the exceptions under Section 270AA of the Act. However, the revision petition came to be rejected by order dated 13.03.2023.

7. Learned counsel for the petitioner, with reference to order dated 27.07.2021 (Annex.9), passed by the Deputy Commissioner rejecting the application under Section 270AA of the Act made submissions that the said order has been passed contrary to the express provisions of the Act. Submissions have been made that in the application filed under Section 270AA of the Act (Annex.7), the petitioner had clearly sought opportunity of being heard, however, no opportunity was provided to the petitioner, which action of the authority is in clear violation of the proviso to Section 270AA (4) of the Act. Further submissions have been made that the order is wholly non-speaking, inasmuch as only one line order has been passed that on perusal of the application the authority did not find the same tenable and on that count, the order deserves to be set aside.

8. Further submissions have been made that the revisional authority, instead of appreciating the defect in the order passed by the Deputy Commissioner, has rejected the application by observing that the case of the petitioner is within the ambit of

Clauses (a) and (c) of Section 270A (9) of the Act and, therefore, Clause (3) of Section 270AA would apply to its case. It is submitted that the said observations are also without any basis, as nowhere it has been shown as to how the case would fall within Clause (a) or (c) of Section 270A (9) of the Act. It was emphasized that the petitioner on its own, suo moto, had during the course of scrutiny proceedings, offered the amount by revising its return of income and adding back the amount to total income and, therefore, the same was not a case of misrepresentation or suppression of facts or claim of expenses not substantiated by any evidence, as required by sub-Clauses (a) and (c) of Section 270A (9) and, therefore, on that count also the order passed by the revisional authority deserves to be set aside.

9. Reliance was placed on *Schneider Electric South East Asia (HQ) PTE Ltd. vs. Assistant Commissioner of Income Tax International Taxation Circle-3 (1) (2), New Delhi & Ors.* : WP (C) 5111/2022 decided on 28.03.2022 by Delhi High Court.

10. Learned counsel for the respondents made submissions that the present was a case of clear misrepresentation and suppression of facts, inasmuch as the petitioner had merged the provision for doubtful GST input tax credit in expense account, whereas the same was part of income and it is only during the scrutiny proceedings that the said income was offered for taxation, the plea raised that the petitioner has suo moto offered the income, is not borne out from the record and, therefore, the plea raised in this regard cannot be accepted. It was submitted that the Deputy Commissioner was justified in rejecting the application seeking immunity from imposition of penalty and the revisional authority

has thoroughly considered all the aspects, as raised by the petitioner, and has recorded a categorical finding that case of the petitioner falls within sub-Clause (a) and (c) of Section 270A (9) of the Act and, therefore, the orders impugned did not call for any interference.

11. We have considered the submissions made by counsel for the parties and have perused the material available on record.

12. The facts, are not in dispute, wherein on filing of original and revised returns, the case of the petitioner was selected for complete scrutiny and the petitioner was called upon to respond to as many as ten issues by the NeAC. On all the ten issues, on which the scrutiny was conducted, the response of the petitioner was accepted. However, qua the amount of GST which was offered by the petitioner for taxation, it was observed as under:

“5. Lastly, as per the revised computation of income dated 24/02/2021, the assessee has submitted and offered the GST Provision of Rs.16,30,91,496/- for taxation, which is added back to the total income of the assessee for the year under consideration.

(Addition Rs. - 16,30,91,496/-)

Penalty u/s 270A of the Income Tax Act 1961 is imposed for misreporting of income”

13. From the above assessment order, one aspect is very clear that the authorities under the Act had not detected the said aspect of amount of provision for GST and it was voluntarily offered by the petitioner.

14. As the order was passed for imposing penalty under Section 270A of the Act, the petitioner moved an application under Section 270AA of the Act, which reads as under:

“270AA. Immunity from imposition of penalty, etc.—
(1) An assessee may make an application to the Assessing Officer to grant immunity from imposition of penalty under section 270A and initiation of proceedings under section

276C of section 276CC, if he fulfils the following conditions, namely:—

(a) the tax and interest payable as per the order of assessment or reassessment under sub-section (3) of section 143 or section 147, as the case may be, has been paid within the period specified in such notice of demand; and

(b) no appeal against the order referred to in clause (a) has been filed.

(2) An application referred to in sub-section (1) shall be made within one month from the end of the month in which the order referred to in clause (a) of sub-section (1) has been received and shall be made in such form and verified in such manner as may be prescribed.

(3) The Assessing Officer shall, subject to fulfilment of the conditions specified in sub-section (1) and after the expiry of the period of filing the appeal as specified in clause (b) of sub-section (2) of section 249, grant immunity from imposition of penalty under section 270A and initiation of proceedings under section 276C or section 286CC, where the proceedings for penalty under section 270A has not been initiated under the circumstances referred to in sub-section (9) of the said section 270A.

(4) The Assessing Officer shall, within a period of one month from the end of the month in which the application under sub-section (1) is received, pass an order accepting or rejecting such application:

Provided that no order rejecting the application shall be passed unless the assessee has been given an opportunity of being heard.

(5) The order made under sub-section (4) shall be final.

(6) No appeal under section 246A or an application for revision under section 264 shall be admissible against the order of assessment or reassessment, referred to in clause (a) of sub-section (1), in a case where an order under sub-section (4) has been made accepting the application."

15. The provisions of Section 270A of the Act, to the extent relevant, reads as under:

"270 (1)

(2)

xxx

(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;

(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.”

16. A perusal of above provisions would reveal that under sub-Section (3) of Section 270AA of the Act, the Assessing Authority can grant immunity from imposition of penalty under Section 270A, where the proceedings for penalty under Section 270A has not been initiated under the circumstances, referred to in sub-Section (9) of Section 270A of the Act and under the provisions of sub-Section (4), it has been provided that no order rejecting application shall be passed unless the assessee has been given an opportunity of being heard.

17. Admittedly, the petitioner in its application under Section 270AA of the Act had sought personal hearing and the authority was bound to provide such personal hearing, however, admittedly no opportunity of hearing was provided to the petitioner. The application came to be rejected by the Deputy Commissioner by observing as under:

“7. Under the facts and circumstances of the case, as the assessee has fulfilled all the conditions laid down under the Section 270AA (1) of the Act except the condition envisaged under sub-section 3 of the Section 270AA of the Act which is as under:-

The Assessing Officer shall, subject to fulfilment of the conditions specified in sub-section (1) and after the expiry of the period of filing the appeal as specified in clause (b) of sub-section (2) of section 249, grant immunity from imposition of penalty under section 270A and initiation of proceedings under section 276C or section 286CC, where the proceedings for penalty under section 270A has not been initiated under the circumstances referred to in sub-section (9) of the said section 270A.

8. In view of above facts and circumstances of the case, application of the assessee company in respect of immunity from imposition of penalty under Section 270AA of the Act is perused but not found tenable as the penalty u/s 270A of the Act for the AY 2018-19 has been initiated

under the circumstances referred to in sub-section (9) of the said Section 270A of the Act and is hereby rejected.”

18. A perusal of above order would reveal that the authority had passed a wholly non-speaking order by only reiterating the provisions of sub-Section (3) of Section 270AA and indicated that the application was not found tenable, as penalty under Section 270AA of the Act has been initiated under the circumstances, referred to in sub-Section (9) of Section 270A of the Act.

19. Neither in the order dated 19.04.2021 (Annex.6) nor in the order impugned (Annex.9) anything has been indicated as to under which sub-clause of Section 270A (9), the case of the petitioner falls and only mechanical observations have been made to justify the imposition of penalty.

20. The revisional authority, in its order dated 13.03.2023 (Annex.14), cursorily observed that the case is observed to be within the ambit of Clause (a) and (c) of Section 270A (9) of the Act, therefore, 270AA (c) may apply to petitioner's case. The revisional authority apparently did not consider the fact that the petitioner was not afforded opportunity of hearing in violation of provisions of proviso to Section 270AA (4) and that the order impugned before it was wholly non-speaking and attempted to justify imposition of penalty under Section 270A (9) (a) and (c). The very fact that the indications were made that the matter fall within (a) and (c), necessarily means that even the revisional authority was not sure whether it was a case of misrepresentation or suppression of facts or claim of expense, not substantiated by any evidence.

21. The Delhi High Court in Schneider Electric South East Asia (HQ) PTE Ltd. (*supra*), *inter-alia*, observed and directed as under:

“6. Having perused the impugned order dated 09 March, 2022, this Court is of the view that the Respondents’ action of denying the benefit of immunity on the ground that the penalty was initiated under Section 270A of the Act for misreporting of income is not only erroneous but also arbitrary and bereft of any reason as in the penalty notice the Respondents have failed to specify the limb – "under reporting" or "misreporting" of income, under which the penalty proceedings had been initiated.

7. This Court also finds that there is not even a whisper as to which limb of Section 270A of the Act is attracted and how the ingredient of sub-section (9) of Section 270A is satisfied. In the absence of such particulars, the mere reference to the word "misreporting" by the Respondents in the assessment order to deny immunity from imposition of penalty and prosecution makes the impugned order manifestly arbitrary

8. This Court is of the opinion that the entire edifice of the assessment order framed by Respondent No.1 was actually voluntary computation of income filed by the Petitioner to buy peace and avoid litigation, which fact has been duly noted and accepted in the assessment order as well and consequently, there is no question of any misreporting

9. This Court is further of the view that the impugned action of Respondent No.1 is contrary to the avowed Legislative intent of Section 270AA of the Act to encourage/incentivize a taxpayer to (i) fast-track settlement of issue, (ii) recover tax demand; and (iii) reduce protracted litigation.

10. Consequently, the impugned order dated 09th March, 2022 passed by Respondent No.1 under Section 270AA (4) of the Act is set aside and Respondent No.1 is directed to grant immunity under Section 270AA of the Act to the Petitioner.

11. With the aforesaid directions, the present writ petition along with pending applications stand disposed of.”

22. The finding recorded by the revisional authority is apparently contrary to the facts and essentially based on assumptions only on account of the fact that the petitioner on its own disclosed the income in question. As noticed hereinbefore, though several notices were issued under Section 142 of the Act, during the course of scrutiny proceedings and as many as ten issues were raised, on which the authority could not make any additions, the aspect of merging GST Input Credit with expenses was not pointed out/detected and the same was only pointed out voluntarily by the

petitioner and, therefore, apparently sub-Clauses (a) and (c) of Section 270A (9) of the Act are not attracted.

23. In view of above, it is apparent that the Deputy Commissioner violated the provisions of proviso to Section 270AA (4) of the Act by not providing any opportunity of hearing, the order passed was wholly laconic, the same did not indicate as to under which part of Section 270A (9), the case of the petitioner was covered and the revisional authority without giving any cogent reasons, has in a wholly cursory manner indicated the case of the petitioner, was within the ambit of Clause (a) and (c) of Section 270A (9) of the Act and, therefore, the order passed by the assessing authority rejecting application under Section 270AA and the order passed by the revisional authority rejecting revision petition, cannot be sustained.

24. Consequently, the writ petition is allowed. The orders impugned dated 27.07.2021 (Annex.9) passed by the Deputy Commissioner and 13.03.2023 (Annex.14) passed by the revisional authority are quashed and set aside. The respondents are directed to grant immunity under Section 270AA of the Act to the petitioner.

(SHUBHA MEHTA),J

(ARUN BHANSALI),J

(R) DJ/-