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

+ **Date of Decision:04.03.2020**

% **W.P.(C.) No. 10289/2019**
M/S INDUS TOWERS LTD

..... Petitioner

Through: Mr. Balbir Singh, Sr. Adv. with Mr. Sachit Jolly, Mr. Rohit Garg and Mr. Siddharth Joshi, Advs.

versus

**ASSISTANT COMMISSIONER OF INCOME -TAX CIRCLE 12(1)
& ANR.**

..... Respondent

Through: Mr. Raghvendra Singh, Sr. Standing Counsel with Ms. Easha Kadian Mr. Rajat Kumar, Add. Commissioner of Income Tax, Mr. Ankur, Asst. Commissioner of Income Tax

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE SANJEEV NARULA

VIPIN SANGHI, J. (ORAL)

C.M. No. 42494/2019

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

W.P.(C) 10289/2019 and C.M. No. 42493/2019

3. We have heard learned senior counsel for the petitioner as well as learned senior standing counsel for the respondent. On 23.09.2019, we had passed the following order in the petition:

“Issue notice. Mr. Raghvendra Singh accepts notice. Counter-affidavit be filed within six weeks. Rejoinder be filed before the next date of hearing.

We have heard learned Senior counsel for the petitioner as well as learned senior standing counsel for the department at substantial length on the interplay of Section 220(6) and the Office Memorandum dated 29.02.2016 issued on the subject of partial modification of Instruction No. 1914 dated 21.03.1996 to provide for guidelines for stay of demand at the first appeal stage. While Section 220(6) uses the expression “amount in dispute”, the Office Memorandum dated 29.02.2016 uses the expression “demand disputed before CIT(A)”, “demand in dispute” and “disputed demand”. The expression used in the aforesaid office memorandum require interpretation in the light of Section 220(1) and 220(6).

The issue is, whether, in terms of the O.M. dated 29.02.2016, the petitioner is required to deposit 20% of the demand raised by the respondent of Rs. 690.73 crore, or 20% of the tax on the amount in dispute. The submission of learned senior counsel for the petitioner is that 20% of the tax on amount in dispute (i.e. the amount assessed minus the amount returned) already stands paid/ credited. The issue raised in this petition would require deeper consideration.

Considering the aforesaid, we restrain the respondents from taking any coercive action against the petitioner for recovery of the demanded amount. This is subject to the condition that the petitioner shall not seek any adjournment of the hearing of the appeal pending before the CIT (A). The Ld. CIT (A) may

proceed to adjudicate the appeal uninfluenced by this order. In case, the said appeal is decided before the next date, we make it clear that this interim order shall merge in the order that the CIT(A) may pass.

List on 17.01.2020.”

4. This order had been passed by us on the basis of a tabulation placed before us by learned senior counsel for the petitioner on the said date, which is on record. The said tabulation is relevant, and reads as follows:

“ TAX CALCULATION AS PER ASSESSED INCOME

	<i>PARTICULARS</i>	<i>AMOUNT(IN INR)</i>	<i>Pg. No. in WP</i>
	<i>Assessed Income</i>	<i>1994,56,00,448</i>	<i>1123</i>
	<i>Retuned Income</i>	<i>210,24,62,383</i>	<i>941</i>
	<i>Tax on Assessed Income (A)</i>	<i>662,54,29,843</i>	<i>1123</i>
<i>Less:</i>	<i>Tax on Retuned Income (B)</i>	<i>69,83,85,442</i>	<i>1130</i>
	<i>Tax on Disputed Demand (C=A-B)</i>	<i>592,70,44,401</i>	<i>-</i>
<i>Add:</i>	<i>Interest [U/s 234B+ 234D] [D]</i>	<i>229,94,31,675</i>	<i>1123, 1124</i>
	<i>Total Disputed Demand E=C+D</i>	<i>822,64,76,076</i>	
	<i>20% of Disputed Demand Payable F= 20% of E</i>	<i>164,52,95,215</i>	

<i>Prepaid Taxes Paid (TDS + Advance Tax)</i> <i>TDS-597,80,60,888</i> <i>Adv. Tax -42,11,00,00,000</i> <i>(G)</i>		<i>639,91,60,888</i>	<i>1123</i>
<i>Less:</i>	<i>Prepaid taxes refunded to the petitioner (H)</i>	<i>394,73,92,362</i>	<i>982</i>
<i>Less:</i>	<i>Tax on admitted liability (Returned Income) (I)</i>	<i>69,83,85,442</i>	<i>1130</i>
<i>Total Prepaid taxes lying with the Revenue</i> <i>J= G-H-I</i>		<i>175,33,83,084</i>	

Therefore, total prepaid taxes lying with the Revenue are in excess of 20% of the disputed demand.” (emphasis supplied)

5. From the aforesaid tabulation, it would be seen that the sum and substance of the submission of the petitioner was that the income tax on the returned income of Rs. 210,24,62,383/- amounted to Rs. 69,83,85,442/-. On this basis, the petitioner claimed that the tax disputed demand came to Rs. 592,70,44,401/-. The petitioner added to the said last figure, the amount of interest under Section 234B and 234D – which was stated in the computation as Rs. 229,94,31,675/-, and the total disputed demand was projected as Rs.822,64,76,076/-. In terms of the impugned order – whereby

the Assessing Officer required the petitioner to deposit 20% of the disputed amount, the amount to be deposited was worked out at Rs. 164,52,95,215/-.

6. The petitioner, on the basis of the aforesaid tabulation claimed adjustment/ credit to the tune of Rs.175,33,83,084/-. The said figure was arrived at after deducting from the prepaid taxes of Rs. 639,91,60,888/-, the prepaid tax refund of Rs. 394,73,92,362/- and “ *tax on admitted liability (returned income)*” of Rs. 69,83,85,442/-. Thus, the projection of the petitioner was that the prepaid taxes lying with the revenue were to the tune of Rs.175,33,83,084/-, and the said amount was much more than the 20% of the disputed demand payable at Rs. 164,52,95,215/-.

7. Impressed by the said submission, we had restrained the respondents from taking any coercive action against the petitioner for recovery of the demanded amount. Being conscious of the fact that our interim protection to the petitioner should not be misused, we had also put the petitioner to the condition that the petitioner shall not seek any adjournment of the hearing of the appeal pending before the CIT (A). We also directed that the final order that the CIT (A) may pass, would prevail and our interim order would merge in the said order.

8. Mr. Raghvendra Singh, learned senior standing counsel for the respondent revenue has, firstly, submitted that the petitioner disobeyed the direction of this Court inasmuch, as, the petitioner sought adjournments before the CIT (A) on two occasions. Notice of hearing under Section 250 of the Income Tax Act was issued on 28.01.2020, fixing the hearing on 04.02.2020. On 04.02.2020, Mr. Hitesh Arora, Senior Manager – Tax and

Ms. Ashu Aggarwal, DGM (Taxation) had requested for time to file papers/ documents. The said request was allowed and the matter was adjourned to 26.02.2020 by the CIT (A). Admittedly, thereafter, a communication was submitted by the petitioner to the CIT (A) – stating that the appeal in respect of the assessment year 2010-11 – raising same issues, was already pending before another CIT (A), which had been heard and, therefore, the hearing in the present appeal be adjourned to await the decision in the said appeal. That communication is also dated 04.02.2020. On 26.02.2020, it appears that the matter was adjourned to 15.04.2020, though it is not clear that the said adjournment was sought by the petitioner. Mr. Balbir Singh, learned senior counsel for the petitioner, on instructions, states that the adjournment was granted due to non-availability of the CIT (A) on the said date.

9. Though Mr. Balbir Singh has sought to explain that the proceedings were adjourned to 04.02.2020, since it was understood that the decision in the appeal for the Assessment Year 2010-11 should be awaited, in our view, that was no justification for the petitioner to have not proceeded to argue the appeal when the same was listed before the CIT (A) on 04.02.2020. This is because we had passed our order restraining the petitioner from taking adjournments in the appeal before the CIT (A), as early as on 23.09.2019. If the petitioner desired that the appeal for the relevant Assessment Year 2011-12 be either heard along with the appeal for AY 2010-11, or that the decision in the said earlier appeal be awaited, it was for the petitioner to approach this Court to seek modification of the condition imposed vide our order dated 23.09.2019. The petitioner could not have disregarded the condition imposed upon it by us in our order dated 23.09.2019, and

continued to enjoy the stay granted by us due to pendency of the appeal for the earlier assessment year.

10. We may have overlooked the aforesaid infraction of the condition and taken a lenient view of the matter – in view of the explanation furnished by Mr. Balbir Singh, learned senior counsel for the petitioner. However, we find that there is a much more serious issue raised by Mr. Raghvendra Singh, learned senior standing counsel for the Revenue. The issue raised is that of gross suppression and misstatement by the petitioner, which led to a false projection of the outstanding liability/ refund due from/ to the petitioner.

11. It is pointed out by Mr. Raghvendra Singh that the petitioner was required to file a consolidated return in respect of the merged entity i.e. the petitioner, which was filed by the petitioner for the assessment year 2011-12. The petitioner had, in the said return, computed the net taxable income (loss) as Rs.(-)11,977,945,558/-. The assessment order computes the taxable income after making several additions and disallowances, Rs. 1994,56,00,488/- which is under challenge before the CIT (A). Pertinently, even if the consolidated financial statement furnished by the petitioner were to be accepted as true and correct, the Minimum Alternate Tax (MAT) liability worked out by the petitioner itself is Rs.2,247,073,334/-. Pertinently, the petitioner itself computed the book profit at Rs.1127,45,45,714/- and on that basis, the petitioner would be liable to pay tax of Rs. 2,247,073,334/-. This is the minimum tax liability that the petitioner would have to incur. It could be higher, if the additions/

disallowances result in net taxable income increasing.

12. Even if the Assessing Officer were to accept the consolidated return, as filed by the petitioner, or the said appeal were to be accepted by the CIT (A), admittedly, its liability would be to the tune of Rs.2,247,073,334/-. However, the petitioner, while circulating the aforesaid tabulation at the initial hearing of the petition, projected the “*Tax on Returned Income*” as Rs. 69,83,85,442/- on the assumption that its returned income was Rs. 210,24,62,383/-, and without accounting for the several additions and disallowances made by the Assessing Officer. Pertinently, in the Assessment order, the figure of Rs. 69,83,85,442/- is nowhere to be seen. If the petitioner were to be fair to the Court, the petitioner would have reflected the amount of Rs. 2,247,073,334/ – which was the minimum tax liability of the petitioner, assuming that its return based on the consolidated financial statement, were to be accepted.

13. Similarly, against the column indicating the “*Tax on admitted liability (Returned Income)*”, the said amount of Rs. 2,247,073,334/- would have been reflected, which would have completely changed the equation that was projected before us by the petitioner.

14. The explanation furnished by Mr. Balbir Singh, learned senior counsel for the petitioner for not disclosing the MAT tax liability, is that the Assessing Officer had not accepted the return on MAT basis and, therefore, the said amount was not reflected.

15. We do not find any weight in this submission. Since, the MAT

liability, even according to the petitioner, was the higher of the two figures i.e. the tax on the net taxable income (as returned by the petitioner), and the MAT amount, the petitioner could not have run away from the fact that its liability was, at least, if not more than Rs. 2,247,073,334/-. Thus, we were clearly misled by the petitioner at the preliminary hearing of the petition which led to our passing the interim order.

16. Considering the fact that the petitioner has invoked the discretionary extraordinary writ jurisdiction of this Court, the petitioner was expected to approach this Court with clean hands, which, unfortunately, we find is completely lacking in the present case. We are, therefore, not inclined to exercise our discretionary writ jurisdiction in favour of such a petitioner. Accordingly, we dismiss this petition with costs quantified at Rs. 5 lakhs to be paid to the Delhi High Court Advocates' Welfare Trust. The costs should be paid within two weeks from today.

VIPIN SANGHI, J

SANJEEV NARULA, J

MARCH 04, 2020

N.Khanna