

\$~207

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

+ W.P.(C) 8586/2022 & CM APPL.25860/2022

M/S SCHNEIDER ELECTRIC INDIA PVT. LTD Petitioner

Through: Mr. Deepak Chopra, Advocate with
Mr. Rohan Khare and Ms. Pratishta
Singh, Advocates.

versus

ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE 22(2),
DELHI AND ANR Respondents

Through: Mr. Puneet Rai with Ms. Adeeba
Mujahid and Mr. Karan Pandey,
Advocates.

%

Date of Decision: 1st June, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMOHAN, J (Oral):

1. Present writ petition has been filed challenging the show cause notice dated 15th March, 2022 issued under section 148A(b) of the Income Tax Act, 1961 (for short 'Act'), order dated 31st March, 2022 issued under Section 148A(d) and the notice dated 31st March, 2022 issued under section 148 of the Act for the Assessment Year 2018-19.

2. Learned counsel for the Petitioner submits that in terms of the "information" available with the Respondent No 1, it has been alleged that the Petitioner's claim for IGST Refund was incorrect and hence, the said

amount “is required to be disallowed”. He states that an IGST Refund, being a balance sheet item, is not a claim made in the profit and loss account and by no stretch of imagination can the same be termed as “income chargeable to tax having escaped assessment” and hence, in terms of Section 147 of the Act as well as the first proviso to Section 148, the show cause notice dated 15th March, 2022 is patently illegal.

3. Learned counsel for the Petitioner also states that the order dated 31st March, 2022 passed under section 148A(d) of the Act and notice dated 31st March, 2022 issued under section 148 of the Act have been passed/issued in gross violation of the principles of natural justice. He states that the impugned order does not even mention that the petitioner had filed an application seeking an adjournment so as to enable it to file a reply on merits.

4. He emphasises that the petitioner became aware of the show cause notice dated 15th March, 2022 for the first time on 24th March, 2022 as it was sent to the wrong email address.

5. Learned counsel for the petitioner lastly states that the impugned order also reeks of non-application of mind since the said order records incorrect facts.

6. Issue notice.

7. Mr. Puneet Rai, learned counsel on instructions states that as the Petitioner did not have the opportunity to file a reply and the order under Section 148A(d) was not on merits, the Respondent has no objection if the matter is remanded back to the Assessing Officer for a fresh decision.

8. Learned counsel for the Petitioner is agreeable to the same. He emphasises that the Petitioner shall raise all its submissions and contentions

before the Assessing Officer by filing additional objections.

9. Keeping in view the aforesaid, the impugned order under Section 148A(d) and the notice issued under Section 148 of the Act dated 31st March, 2022 for the Assessment Year 2018-19 are set aside and the matter is remanded back to the Assessing Officer for a fresh decision. The Petitioner is given liberty to file its additional reply to the show cause notice issued under Section 148A(b) of the Act within two weeks. The Assessing Officer is directed to decide the matter by way of a reasoned order in accordance with law within eight weeks thereafter. This Court clarifies that it has not commented on the merits of the controversy. The rights and contentions of all the parties are left open.

10. With the aforesaid direction, the present writ petition and application stand disposed of.

MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

JUNE 1, 2022
AS