(2024:HHC:14457)

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.3381 of 2024
Date of Decision : 10.12.2024

Inox Wind Limited

…… Petitioner

Versus

Assessment Unit, Income Tax Department and others

……Respondents

Coram:

The Hon'ble Mr. Justice Tarlok Singh Chauhan, Acting Chief Justice

The Hon'ble Mr. Justice Bipin Chander Negi, Judge

Whether approved for reporting?[1] *Yes*

For the Petitioner : Mr. Rohit Jain & Mr. Aditya Vohra, Advocates (through video conferencing) and Mr. Deven Khanna, Advocate.

For the Respondents : Mr. Neeraj Sharma and Mr. Ishaan Kashyap, Advocates.

Tarlok Singh Chauhan, Acting Chief Justice (oral)

We have heard learned counsel for the parties and gone through the material placed on record.

2. We are clearly of the view that the petitioner has not been provided a meaningful much less a reasonable opportunity of presenting its case.

3. It is not in dispute that the assessment proceedings against the petitioner were carried out and finalized vide order dated

[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

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23.01.2018 and separate proceedings for imposition of penalty were also initiated on the same day vide order dated 23.01.2018 itself. However, the petitioner then filed an appeal against the assessment authority which came to be dismissed vide order dated 14.11.2022.

4. Despite the appeal having been dismissed in November, 2022, the respondents made no efforts to impose the penalty and on one fine day, i.e., 27.03.2024, issued show cause notice under Section 271 (1)(c) of the Income Tax Act, 1968 calling upon the petitioner to submit its response along with supporting documentary evidence, if any, by 4:30 p.m., on 28.03.2024 and case was fixed for oral arguments on 29.03.2024, on which date it was finally decided.

5. It is vehemently argued by Mr. Neeraj Sharma and Mr. Ishaan Kashyap, learned Advocates that it is not the case where the petitioner was not being afforded an opportunity of hearing in the matter and they have also invited our attention to Paragraph-5 of the show cause notice dated 27.03.2024.

6. No doubt, the petitioner as per this show cause notice was to be afforded an opportunity of personal hearing. But all this exercise of giving opportunity to file documents and thereafter an opportunity of personal hearing was wrapped up in 48 hours.

7. The parameters of principles of natural justice cannot be covered by any straight jacket formula. It would vary depending upon

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the circumstance involved. Likewise, what would be "reasonable opportunity" would also depend upon the fact situation.

8. "Opportunity of hearing", as per Black's Law Dictionary, Tenth Edition means, the chance to appear in a Court or other Tribunal and present evidence and argument before being deprived of a right by governmental authority. The opportunity to be heard is a fundamental requirement of procedural due process. It ordinarily includes the right to receive fair notice of the hearing, to secure the assistance of counsel, and to cross-examine adverse witnesses.

9. Since the proceedings in a Court of law as well as quasi-judicial proceedings are conducted in due process, it shall be apt to reproduce the meaning of "due process" as has been given in Black's Law Dictionary, which reads as under:-

> *"The conduct of legal proceedings according to established rules and principles for the protection and enforcement of private rights, including notice and the right to a fair hearing before a Tribunal with the power to decide the case."*

10. Judging the facts of instant case in the aforesaid context, we are of the considered view that the petitioner was deprived of its right of fair hearing as contemplated under the law given the fact that vide notice dated 27.03.2024, less than 24 hours' time was granted to it to produce the documentary evidence on 28.03.2024 by 4:30 p.m. and equal time, i.e., less than 24 hours' time was granted for addressing

oral arguments by calling upon it on the very next day, i.e., 29.03.2024, on which date, it was finally decided.

11. In the given facts and circumstances, we are clearly of the view that order dated 29.03.2024 imposing penalty is not sustainable and subsequently even the demand notice issued under Section 156 of the Income Tax Act vide Annexure P-10 is also not sustainable and accordingly both, penalty order and demand notice, are quashed and set aside.

12. The matter is remanded back to the authority with a direction to afford a meaningful opportunity to the petitioner to file its response along with documentary evidence and further provide the petitioner an opportunity of personal hearing. The entire exercise be completed within a period of two months from today.

13. In view of the aforesaid, present petition stands disposed of, so also, pending miscellaneous application(s), if any.

(Tarlok Singh Chauhan)
Acting Chief Justice

(Bipin Chander Negi)
Judge

December 10, 2024 **(KS/Nisha)**