IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	22.04.2026
Pronounced on	20.07.2026

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.18451 of 2025
and
W.M.P.No.20670 of 2025

M/s. Grace Infrastructure Private Limited
Represented by its Managing Director
Mr.A.L.Shah
A-5, Industrial Estate, Thattanchavadi
Pondicherry - 605009. ... Petitioner

Vs.

1. The Principal Commissioner of Income Tax-3
   Income Tax Department
   Main Building IV Floor,
   No.121, Mahatma Gandhi Road
   Nungambakkam, Chennai - 600 034.

2. The Assistant Commissioner Income Tax Officer, Circle-1
   Office of the Assistant Commissioner Income Tax
   M.G.Road, Puducherry – 605 003. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, calling for the records of the 2nd respondent relating to the Impugned order in PAN: AACCG1992N dated 30.03.2025 in

DIN & Order No. ITBA/REV/F/REV5/2024-25/1075280540 (1) passed under Section 263 of the Income Tax Act, 1961, for the Assessment Year 2020-21 and quash the same.

For Petitioner : Mr.K.Ravi
Senior Counsel
For Rugan and Arya

For Respondents : M/s.Dr.C.P.Priya
Senior Counsel

ORDER

In this writ petition, the petitioner has challenged the impugned order dated 30.03.2025 passed by the 1st respondent under Section 263 of the Income Tax Act, 1961, for the Assessment Year 2020-2021.

2. The impugned order was preceded by a show cause notice dated 05.03.2025. By the impugned order, the assessment order passed under Section 143(3) on 30.09.2022 has been revised.

3. The brief facts that are relevant for disposal of the present writ petition are that the petitioner company had two divisions, namely, the Wind Mill Energy Division and the Nut Division. The company was engaged in the

generation of wind power and the manufacture of nuts, bolts, screws and other similar metal products.

4. The petitioner company was demerged under Section 232 of the Companies Act, 2013 by the Scheme of Amalgamation and Arrangement (Demerger) as per the Common Order dated 04.03.2021 in C.P.Nos.208 to 211 of 2020 in C.A.Nos.1211 to 1214 of 2019 sanctioned under Sections 230 to 232 of the Companies Act, 2013.

5. By virtue of the aforesaid demerger, the Nut Division has been hived off and merged with a resulting company viz., Fastenex Private Limited. As per the sanctioned scheme of demerger, the effective date of the demerger was 01.04.2019.

6. The assessment order dated 30.09.2022 was passed in response to a revised Return of Income filed by the petitioner company on 31.03.2021. However, the due date for filing the revised Return of Income had already expired on 15.02.2021.

7. While the petitioner was required to file their tax audit report by

15.01.2021, they filed it only on 31.03.2021 i.e., the same day the revised return was submitted. Thus, in the assessment order itself, it has been stated that the petitioner was to be separately proceeded under Section 271D of the Income Tax Act, 1961, for the imposition of penalty.

8. The revised return that was filed on the date mentioned above was filed only after the aforesaid order of the NCLT was passed on 04.03.2021, wherein the scheme of Demerger was sanctioned with the effective date of the demerger as 01.04.2019. It is in this background, the petitioner has filed the revised Return of Income on 31.03.2021.

9. The assessment that was completed on 30.09.2022 was preceded by a notice dated 29.06.2021 under Section 143(2) of the Income Tax Act, 1961, which *inter alia* contemplates that,-

> "*Where a return has been furnished under section 139, or in response to a notice under sub-section (1) of section 142, the Assessing Officer or the prescribed income-tax authority, as the case may be, if, considers it necessary or expedient to ensure that the assessee has not understated the income or has not computed excessive loss or has not under-paid the tax in any manner, shall serve on the assessee a notice requiring him, on a date to be specified therein, either to attend the office of the Assessing Officer or to produce, or cause to be produced before the Assessing Officer any evidence on which the assessee may rely in support of the return:*

> **Provided** *that no notice under this sub-section shall be served on the assessee after the expiry of six months from the end of the financial year in which the return is furnished.*]"

10. It is in this background, the petitioner filed a reply on 12.07.2021. A communication to that effect was also issued by the department on 17.12.2021 stating that the assessment was getting time-barred, and therefore, requested the petitioner to furnish the PAN details of the demerged entity. This was complied with by the petitioner by a reply dated 20.12.2021.

11. The petitioner was thus called upon by the 2nd respondent on 11.02.2022 under Section 142(1) to furnish the following documents:

> *"1. Income Computation segment wise of original and received returns for the financial year 2019-20.*
>
> *2. What are the operations performed by the demerged entity? Explain with proof that the income of the demerged entity has been returned in the returns of the resultant company (M/s Fastenex Limited) and taxes paid there on.*
>
> *3. Give details of schedule of assets and liabilities before and after the demerger and at what values they are transferred to the resultant company.*
>
> *4. Explain the depreciation schedule for the financial year 2019-20. What is the WDV of the assets of the existing company and WDV of assets transferred in the demerged company?*

5. Details of 80 IA deductions claimed with supporting documents.

6. Reasons for large claim of refund.

7. Give reasons of loss from currency fluctuations if any.

8. Copy of GSTR return furnished during the financial year 2019-20. Explain the difference in turnover if any.

9. Give reasons for the mismatch in purchases and import data as per ITR and CBEC date and reconcile the same.

10. What is the stock held by the company before and after the demerger and explain the differences in closing and opening stock during the FY 2019-20?"

12. It is noticed that the petitioner had responded to the same in its reply dated 23.02.2022. As far as Serial No.3 in the Section 142(1) notice dated 11.02.2022 is concerned, the petitioner had given the following details:

"3. Give details of schedule of assets and liabilities before and after the demerger and at what values they are transferred to the resultant company.

a) Enclosed the details of schedule of Assets and Liabilities dt. 21.12.2020 before demerger-Annexure-IV (GIPL-Consolidated Nut division and Wind Division)

b) Enclosed the details of schedule of Assets and Liabilities dt.05.03.2021 after demerger-Annexure-V (Grace Infrastructure Pvt Ltd - Wind Division only) *c) Consequent to the NCLT Order, an actual values of all the Assets and liabilities of Nut division has been transferred to Fastenex Pvt Ltd."*

13. Thus, it is evident that pursuant to the NCLT Order dated 04.03.2021, the information furnished by the petitioner before the respondent was not based on the audited balance sheet following the demerger. Instead, the petitioner explained the same through their Chartered Accountant on 13.09.2022 in the form of a reply.

14. The balance sheet enclosed with the reply dated 13.09.2022 appears to be that of 31.03.2020, signed on 21.12.2020 both by the Chartered Accountant, namely R.Subramanian & Company LLP, and by the petitioner company on behalf of the Board, and also countersigned by the company's secretary, namely Somayajula Venkat Shastry.

15. Thus, pursuant to the order of demerger dated 04.03.2021 of NCLT (with an effective date of 01.04.2019), the profit and loss account and the balance sheet of the petitioner company as of 31.03.2020 ought to have been filed for a proper assessment under Section 143(3) of the Income Tax Act, 1961.

16. The balance sheet that was filed on 21.12.2020 could not have formed the basis for the revised Return of Income filed on 15.02.2021 or 31.03.2021, nor for the assessment order passed on 30.09.2022.

17. In fact, the law mandates that the petitioner should have filed a proper revised return after the order of demerger was passed on 04.03.2021, although there was no specific provision similar to Section 170A of the Income Tax Act, 1961, which was inserted with effect from 01.04.2022.

18. The Hon'ble Supreme Court, while dealing with a situation similar to the present case in ***Dalmia Power Limited vs Assistant Commissioner of Income Tax [(2020) 14 SCC 736]***, after taking note of Section 139(5) and Section 170 of the Income Tax Act, 1961, held as under:

> *"12. In the present case, the predecessor companies/transferor companies have been succeeded by the appellants/transferee companies who have taken over their business along with all assets, liabilities, profits and losses, etc. In view of the provisions of Section 170(1) of the Income Tax Act, the Department is required to assess the income of the appellants after taking into account the revised returns filed after amalgamation of the companies.*

19. The said case dealt with a demerged resulting company. The

logical corollary flowing from the above position is that even the demerged company will have to file a revised return after the profit and loss account is prepared based on the audited balance sheet.

20. Section 139(5) and Section 170 of the Income Tax Act, 1961, are reproduced below:-

Section 139(5)	***Section 170***
If any person, having furnished a return under sub-section (1) or sub-section (4), discovers any omission or any wrong statement therein, he may furnish a revised return at any time [before three months prior to the end] of the relevant assessment year or before the completion of the assessment, whichever is earlier.	*(1) An assessee shall make a secondary adjustment in every case where primary adjustment of one crore rupees or more to the transfer price—* *(a) has been made by the assessee on his own in his return of income;* *(b) made by the Assessing Officer has been accepted by him;* *(c) is determined by an advance pricing agreement entered into by him under section 168;* *(d) is made as per the safe harbour rules made under section 167; or* *(e) is arising as a result of resolution of an assessment by way of the mutual agreement procedure under an agreement*

	entered into under section 159 for avoidance of double taxation. *(2) The excess money or part thereof available with its associated enterprise shall be deemed to be an advance made by the assessee to such associated enterprise if—* *(a) as a result of primary adjustment to the transfer price, there is an increase in the total income or reduction in the loss, as the case may be, of the assessee; and* *(b) such excess money or part thereof is not repatriated to India within the time as may be prescribed.* *(3) The excess money or part thereof referred to in sub-section (2) may be repatriated from any of the associated enterprises of the assessee which is not a resident in India.* *(4) The interest on advance as referred to in sub-section (2) shall be computed in such manner as may be prescribed.* *(5) Without prejudice to the provisions of sub-section (2), where the excess money or part thereof has not been repatriated within the prescribed time, the*

	assessee may, at his option, pay additional income-tax at the rate of 18% on such excess money or part thereof, as the case may be. *(6) The tax on the excess money or part thereof so paid by the assessee under sub-section (5) shall be treated as the final payment of tax in respect of the excess money or part thereof not repatriated and no further credit thereof shall be claimed by the assessee or by any other person in respect of tax so paid.* *(7) Deduction under any other provision of this Act shall not be allowed to the assessee in respect of the amount on which tax has been paid as per sub-section (5).* *(8) In a case where the additional income-tax referred to in sub-section (5) is paid by the assessee, he shall not be required to make secondary adjustment under sub-section (1) and compute interest under sub-section (4) from the date of payment of such tax.* *(9) For the purposes of this section,—* *(a) "arm's length price" shall have the meaning assigned to it in section 173(a);* *(b) "excess money" means the*

	difference between the arm's length price determined in primary adjustment and the price at which the international transaction has actually been undertaken; *(c) "primary adjustment" to a transfer price, means the determination of transfer price as per the arm's length principle resulting in an increase in the total income or reduction in the loss, as the case may be, of the assessee;* *(d) "secondary adjustment" means an adjustment in the books of account of the assessee and its associated enterprise to reflect that the actual allocation of profits between the assessee and its associated enterprise are consistent with the transfer price determined as a result of primary adjustment, thereby removing the imbalance between cash account and actual profit of the assessee.*

21. In this background, Section 263 notice dated 05.03.2025 was issued to the petitioner to revise the assessment order dated 30.03.2025 passed by the 2nd respondent.

22. In my view, Section 263 notice dated 05.03.2025 has noted the discrepancies arising out of the revised Return of Income filed on 31.03.2021. In Paragraph No.3 of the said notice, it has been inadvertently stated that pursuant to demerger order, the petitioner had issued 1404278 shares at 5163 per share in consideration of the Net assets transferred to it.

23. The facts remain that pursuant to a business transfer due to a demerger, the capital gains arising out of such a transfer are exempt under Section 47(*vib*).

24. Section 47(*vib*), as inserted by the Finance Act, 1999 with effect from 01.04.2000, reads as under:

> *"any transfer, in a demerger, of a capital asset by the demerged company to the resulting company, if the resulting company is an Indian company."*

25. In the facts of the present case, the net value of the assets (other equity) before the NCLT was shown as Rs.336,70,09,063. However, it is noticed that the valuation of the said asset in the hands of the petitioner was Rs.317,95,35,034.

26. It is in this background, in the notice dated 05.03.2025 issued under Section 263 of the Income Tax Act, 1961, the Assessing Officer stated as under in Paragraph Nos.6 and 7:-

> *"6. However, the Assessing Officer without making proper verification, which should have been made, has passed assessment order without considering the above issue. In view of the above, the order passed u/s. 143(3) r.w.s 144B of the Income Tax Act on30.09.2022 by the Faceless Assessing Officer is erroneous and prejudicial to the interest of revenue in terms of clause (a) of Explanation 2 under sub-section(1) of section 263. Hence, this is fit case for initiating proceedings u/s 263 of the Income-tax Act, 1961.*
>
> *7. You are therefore requested to show cause as to why the order u/s. 143(3) r.w.s. 144B of the Income Tax Act dated 30.09.2022 passed by the Faceless Assessing Officershould not be treated as erroneous and prejudicial to the Interest of Revenue and to be revised u/s 263 of the Income-tax Act, 1961. In this context, you may file your written submissions through e-mail id (chennai.pcit3@incometax.gov.in) on or before* ***12.03.2025 @ 02.30 PM****. If you desire you may appear in person before the undersigned on the above date, on failure to do so, it will be presumed that you have no objection to the proposal for revision and the proceedings will be finalized."*

27. The share was valued at Rs.100, and the net book value of the assets transferred to the resulting company was Rs.336,70,09,062. The net worth of the demerged company before the demerger was shown as

Rs.317,95,35,034. Thus, the cost of acquisition of shares in the demerged company was calculated at Rs.106.

28. The above calculations have been explained in Paragraph No.5 of the said show cause notice dated 05.03.2025, which is reproduced below:

> *"5. In this connection it is observed that in as much as the conditions stipulated in sec.2(19AA) are not complied with, the transfer is not eligible for exemption u/s.47(vib) and thus the shareholders of the demerged company are required to be taxed with capital gains tax for the shares allotted to them in consideration for the transfer of their shares in the demerged company.*

Original cost of shares of the demerged company	=	*100*
Net book value of the assets transferred to the resulting company	=	*Rs.336,70,09,062*
Net worth of the demerged company before demerger	=	*Rs.317,95,35,034*
Cost of acquisition of shares in the resulting company	=	*Rs.106*

Calculation of Capital gains:

Consideration value	=	*Rs.725,02,87,314 (5163*1404278)*
Cost	=	*Rs.14,88,53,468 (106*14042278)*
Capital gains	=	*Rs.710,14,33,846*

(to be shared b/w the shareholders in the ratio of 94.8 and 5.2%)

29. It is in this background that the impugned order has been passed

after considering the petitioner's reply dated 18.03.2025.

30. It is evident that the impugned order has been passed in a hurry to ensure that the proceedings are completed within the limitation period prescribed under Section 263 of the Income Tax Act, 1961, while there is no doubt that the Assessing Officer had a *prima facie* view that the assessment that was completed earlier on 30.09.2022 was both erroneous and prejudicial to the interest of the revenue.

31. The impugned order passed under Section 263 on 30.03.2025 suffers from non-application of mind. Therefore, I am of the view that the impugned order is liable to be set aside, and the matter deserves to be remitted back to the 1st respondent to pass a fresh order, as expeditiously as possible, within a period of six months from the date of receipt of a copy of this order.

32. It is noticed that the revised returns were filed before the 2nd respondent before the Audited Balance Sheets and Profit and Loss Accounts were made ready. Therefore, the case is remitted back to the 1st respondent subject to the Petitioner filing a proper revised Return of Income based on the

revised balance sheet and audited profit and loss account after the order was passed by the NCLT on 04.03.2021, and the same may be taken in consideration while passing a fresh order.

33. It is needless to state that the petitioner shall be heard, before the final order is passed.

34. I deliberately refrain from expressing any opinion on the merits of the case. Therefore, the respondent, while passing a *de novo* order, shall decide the matter independently without being influenced by any observations made in this order on the merits.

35. This writ petition is disposed of with the above directions. No costs. Connected Miscellaneous Petition is closed.

20.07.2026

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Neutral Citation : Yes / No

To

1. The Principal Commissioner of Income Tax-3
   Income Tax Department
   Main Building IV Floor,
   No.121, Mahatma Gandhi Road
   Nungambakkam, Chennai - 600 034.

2. The Assistant Commissioner Income Tax Officer, Circle-1
   Office of the Assistant Commissioner Income Tax
   M.G.Road, Puducherry – 605 003.

<u>C.SARAVANAN, J.</u>

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<u>Pre-delivery Order in
W.P.No.18451 of 2025</u>

20.07.2026