12.12.2022.
p.b.
Sl. No.1&2.

WPA 20210 of 2016
With
WPA 20228 of 2016

Price Waterhouse, a Partnership Firm & Anr.
Vs.
Commissioner of Income Tax, Kolkata & Ors.

Mr. J. P. Khaitan,
Mr. Akhilesh Kr. Gupta,
Mr. Asim Choudhury,
Mr. Sohan Sen.
........for the petitioners.
Mr. S. Roy Choudhury.
........for the respondents.
Mr. Kaushik Dey.
........for the DRI.

In compliance of my order dated 5th December, 2022 the present Assessing Officer concerned and the Commissioner concerned are present in Court, their appearance are dispensed with and their written apology by the letter dated 12th December, 2022 by communication through their counsel is accepted. It appears from paragraph 3 of the said communication that the income tax authority has no objection to the proposal made by the assessee petitioner through its counsel Mr. Khaitan, learned senior advocate and particularly relevant paragraph 3 of the said communication is quoted as hereunder:-

“As regards the proposal for setting aside the order of reference under section 92CA(1) of the Income Tax Act, 1961, for the Assessment Year 2013-14 and passing a fresh order under section 92CA(1) of the Income Tax Act, 1961 in the case of petitioner/assessee in accordance with the provision of law after giving proper opportunity of being heard, I am directed to convey that the competent authority has no objection for the said proposal.”

Considering the facts and circumstances of this case and submission of the parties, this writ petition being WPA 20210 of 2016 is disposed of in the manner indicated in the proposal as hereunder:-

“The subject matter of challenge in this writ petition is the order of reference made by the respondent no.3 Assessing Officer to the respondent no.5 Transfer Pricing Officer under section 92CA(1) of the Income Tax Act, 1961 as mentioned in Annexure P-11 for the Assessment Year 2013-14 and the approval granted by the respondent no.1 Commissioner of Income Tax in that regard as mentioned in Annexure P-9. It is the petitioner’s contention that though the respondent no.1 called the petitioner for a hearing before granting approval, the petitioner was not provided any copy of the proposal of the respondent no.3 containing the reasons for the proposed reference to the respondent no.5. As such, the petitioner was not granted a proper opportunity since the reasons for the proposed reference were not made known to it prior to or even at the time of the hearing. It is also the case of the petitioner that not only copy of the proposal, even copy of the approval granted by the respondent no.1 has not been provided. The records bear out the above factual position.

In such circumstances, the order of reference under section 92CA(1) of the Income Tax Act, 1961 made by the respondent no.3 to the respondent no.5 for the Assessment Year 2013-14 as also the approval of the respondent no.1 in that regard are set aside. The petitioner will be provided with the reasons on the basis of which reference under section 92CA(1) of the Income Tax Act, 1961 is proposed for the Assessment Year 2013-14 in respect of which the petitioner can made its written and oral representations and the respondent nos.1 and 3 will thereafter decide the matter in accordance with law.

All other points in the writ petition are kept open."

Let the writ petition being WPA 20228 of 2016 (Lovelock & Lewes, a Partnership Firm & Anr. Vs. Commissioner of Income Tax, Kolkata-8 & Ors.) be treated as on days list and shall also stand disposed of on the same terms and conditions as indicated hereinabove.

With this observation and direction, these writ petitions being WPA 20210 of 2016 and WPA 20228 of 2016 are disposed of.

(Md. Nizamuddin, J.)