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

\+ W.P.(C) 8743/2010

ORACLE SYSTEMS CORPORATION ..... Petitioner

Through: Sh. M.S. Syali, Sr. Advocate with Sh. Mayank Nagi, Ms. Husnal Syali and Sh. Aditya Raj Singh, Advocates, for the petitioner.

versus

ADDL DIRECTOR OF INCOME TAX CIRCLE,INTERNATIONAL TAXATION ..... Respondent

Through : Sh. Sanjay Kumar and Sh. Dileep Shivpuri, Advocates, for respondent.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

O R D E R

% 10.11.2016

1. In this proceeding under Article 226 of the Constitution of India, the assessee questions a reassessment notice for AY 2003-04 issued by the revenue on 31.03.2010.

2. The "Reasons to Believe" disclosed to the assessee on its demand, as justifying the reassessment notice, noted that the amount payable to its subsidiary – M/s. Oracle India Private Limited (OIPL) had increased exponentially from ₹27.78 crores on 31.03.2002 to ₹115.08 crores on 31.03.2003 and that there was also increase in loan and advance of over ₹87 crores.

3. According to the Assessing Officer (AO), this constituted escaped assessment and a corresponding failure on the assessee's part

to disclose material facts. Likewise, the AO noticed that Oracle Systems Corporation had received ₹16,52,39,953/- as revenues and transferred it to OIPL on overseas contract. This, according to the AO, was undeclared royalty and was taxable to the extent of 30%. The AO, of course, noticed that on the issue of royalty, the assessee had resisted the queries in the course of scrutiny proceeding under Section 143(3) of the Income Tax Act. 1961 [hereafter "the Act"]. However, according to the AO, the explanation given was insufficiently analysed and that this resulted in escape of income. Furthermore, the AO opined that a higher rate of taxation was applicable. Similarly, upon an analysis of the original return, the AO felt that *prima facie* there was an existing PE – which too had escaped scrutiny leading to loss in the revenue.

4. It is urged by the assessee that the completed assessment was under Section 143(3) of the Act which had exhaustively dealt with various issues including those sought to be reopened. Most importantly, it was urged that the previous attempt – abortive as it were - to have the matter re-examined, was made through a reassessment notice (hereafter called "the first reassessment notice") on 22.09.2008. That notice was quashed by the Court in a decision reported as *Oracle Systems Corporation v. ACIT (International)* 380 ITR 232.

5. During the pendency of those proceedings, as indeed the pendency of first reassessment notice, the impugned reassessment notice was issued. This Court nevertheless quashed the first reassessment notice holding that it was contrary to the mandate of

Sections 147/148 of the Act. It is stated that the impugned reassessment notice nowhere discloses what are the objective materials or "tangible materials" that can justify valid reassessment. Citing *CIT v. Kelvinator India Limited* 320 ITR 561, it is urged that in the absence of such objective material, the AO's views howsoever elaborate, would be an impermissible change of opinion that cannot be legally justified.

6. Learned counsel for the revenue relied upon the averments in the counter affidavit and submitted that the records clearly reveal that on several aspects, the concluded assessment orders had overlooked material facts. Learned counsel relied upon the first Explanation to Section 147 of the Act to urge that an inconclusive determination as to relevant facts is no material at all and in these circumstances, the reassessment notice impugned ought to be left undisturbed.

7. *Kelvinator (supra)* is conclusive as to the circumstances that can justify reopening of concluded assessment. In this case, the revenue nowhere states that relevant or material facts were not disclosed. It is also a matter of record that all materials were analysed in the course of scrutiny assessment on some of the substantive or principal issues sought to be reopened. Barring receipt of fresh information containing pointers to suppression of material facts or non-disclosure of facts or facts reported wrongly, which constitute "tangible material" after the conclusion of the original assessment, the latter is for all purposes final. In this case too, the Revenue's anxiety to somehow reopen the proceedings is all too apparent. This is evidenced by its abortive attempt through the notice of 22.09.2008

and even during the pendency of proceedings emanating from it, the issuance of these reassessment notices. The first was quashed on the ground that it is contrary to law. The second too has to suffer the same fate for the same reasons. The mere regurgitation of the same facts or the more elegant elaboration would not constitute “tangible material” in the absence of objective fresh facts. The impugned notice and all proceedings are, therefore, quashed. The writ petition is accordingly allowed.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

NOVEMBER 10, 2016
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