

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2017

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.Nos.9199 & 9200 of 2017
and
WMP.Nos.10127 & 10128 of 2017

M/s.Volex Interconnect India Private Limited
22/1A, First Street, Kazura Gardens
Neelankarai, Chennai-600 041
Rep. By its Managing Director T.S.Sriram

...Petitioner
(in WP.Nos.9199 & 9200 of 2017)

Vs.

1.The Deputy Commissioner of Income tax
Transfer Pricing Officer 3(2)
5th Floor, Tower-1, BSNL Building,
No.16, Greams Road,
Chennai-600 006.

2.The Deputy Commissioner of Income Tax
Company Circle 3(2)
121, Mahatma Gandhi Road,
Chennai-600 034.

3.The Commissioner of Income Tax (TP) - 1/2
5th Floor, Tower-1, BSNL Building
No.16, Greams Road,
Chennai-600 006.

...Respondents
(in WP.Nos.9199 & 9200 of 2017)

Prayer:

Writ Petition No. 9199 of 2017 filed under Article 226 of The Constitution of India, praying for the issuance of a Writ of Certiorari, to call for the records of the 1st respondent and quash the impugned order of the Deputy Commissioner of Income Tax in No.V-609/TPO 3(2)AY/2010-11 dated 27.01.2017 passed by the 1st respondent giving effect to the order of the Hon'ble ITAT for the assessment year 2010-11.

Writ Petition No.9200 of 2017 filed under Article 226 of The Constitution of India, praying for the issuance of a Writ of Certiorari, to call for the records of the 1st respondent and quash the impugned order of the Deputy Commissioner of Income Tax in No.V-204/TPO 3(2)AY/2011-2012 dated 27.01.2017 passed by the 1st respondent giving effect to the order of the Hon'ble ITAT for the assessment year 2011-2012.

For Petitioner : Mr.S.P.Chidambaram

For Respondents : Mr.M.Swaminathan
Standing Counsel (IT)

C O M M O N O R D E R

These writ petitions are filed challenging the order dated 27.01.2017 passed by the first respondent giving effect to the order of the Income Tax Appellate Tribunal dated 24.08.2016 for the assessment years 2010-2011 & 2011-2012.

2. The petitioner was originally issued with orders of assessment and challenging such orders, the petitioner filed an appeal before the Dispute Resolution Panel, which in turn by order dated 24.12.2014 issued some directions to the Assessing Officer to consider the method for determination of arm's length price. Challenging the said decision, the Revenue filed an appeal before the Income Tax Appellate Tribunal. By an order dated 24.08.2016, the Tribunal remitted the matter back to the Assessing Officer for considering the issue in the light of the Judgment rendered by the Delhi High Court in ITA No.5097/Del/2011 in the case of M/s.Knorr Bremsc India Pvt. Ltd., Vs. ACIT. **Consequent upon such remand, the first respondent passed the present impugned order.**

3. According to the learned counsel for the petitioner, the first respondent has not applied the said decision of the Delhi High Court in the case of M/s.Knorr Bremsc India Pvt. Ltd., Vs. ACIT to the petitioner's case and therefore the giving effect order issued by the first respondent is not in accordance with the directions issued by the Tribunal. Therefore, the learned counsel sought interference of this Court, by exercising the jurisdiction under Article 226 of the Constitution of India. No doubt, the learned counsel also raised other points touching upon the merits of the matter.

4. On the other hand, the learned standing counsel (IT) submitted that when the first respondent has passed the orders and given a finding as to which is the method to be followed to determine the ALP of the petitioner's case, the correctness or otherwise of the said order has to be canvassed only before the

next fact finding authority, namely the First Appellate Authority and therefore, this Court need not interfere with the impugned orders.

5. Heard the learned counsel appearing for the petitioner and the learned standing counsel appearing for the respondents, who takes notice for the respondents at the admission stage itself.

6. It is not in dispute that the giving effect orders passed by the first respondent, impugned in these writ petitions can be challenged before the next fact finding authority, namely the First Appellate Authority. No doubt the learned counsel for the petitioner sought to contend that the first respondent has not given effect to the orders passed by the Tribunal, by applying the decision of the Delhi High Court in M/s.Knorr Bremsc India Pvt. Ltd., Vs. ACIT case. But a perusal of the order impugned would show that the first respondent sought to distinguish the facts and circumstances of the present case, with that of the facts and circumstances of M/s.Knorr Bremsc India Pvt. Ltd., Vs. ACIT case. Whether such distinction of the facts as done by the first respondent is correct or not, is for the next fact finding authority to consider and decide, as such exercise involves appreciation of the facts and circumstances of both the cases.

7. Therefore, this Court, at this stage is not inclined to entertain this writ petition, by exercising jurisdiction under Article 226 of the Constitution of India, as the petitioner is having an effective alternative remedy of appeal before the First Appellate Authority, who is undoubtedly, the fact finding appellate authority as well.

8. Moreover, it is well settled that in cases involving fiscal nature, availing of statutory appellate remedy has to be first exhausted and the party cannot come directly to this court and file a petition under Article 226 of the Constitution of India. At this juncture, it is useful to refer to the following decisions:-

1) M/s.Nivaram Pharma Private Limited, rep. By its Director Sardarmal M.Chordia, Madras -vs- The Customs, Excise and Gold (Control) Appellate Tribunal, South Regional Bench, Madras and others reported in (2005) 2 MLJ 246(DB).

2) United Bank of India -vs- Satyawati Tondon and others reported in (2010) 8 SCC 110.

3) Raj Kumar Shivahare -vs- Assistant Director, Directorate of Enforcement and Another reported in (2010) 4 SCC 772.

4) Metal Weld Electrodes -vs- CESTAT, Chennai reported in 2014 (299) ELT 3 DB.

9. It is held in those cases that when an alternative remedy is available, more particularly, in the cases of fiscal nature, invoking of the jurisdiction under Article 226 of the Constitution of India, is not permissible. When the petitioner is having an alternative remedy of appeal to file the appeal before the CESTAT, it is for them to file such appeal and canvass all the points. This Court exercising discretionary jurisdiction under Article 226 of the Constitution of India, is not inclined to entertain the writ petitions only on the reason of availability of alternative remedy. It is however made clear that this Court is not expressing any view on the merits of the matter raised by the petitioner herein, as it is for the Appellate Authority to consider and decide. Accordingly, these writ petitions are dismissed only on the ground of availability of alternative remedy, with liberty to the petitioner to approach the said First Appellate Forum. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

mk

To

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+2cc to Mr.M.Swaminathan,Advocate sr.22778,22779

+2cc to Mr.Subbaraya Aiyar,Advocate sr.22881,22882

W.P.Nos.9199 & 9200 of 2017

ss1(co)
ss(25/4/2017)