IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2017

Date of Reserving the Order	*Date of Pronouncing the Order*
24.11.2017	**08.12.2017**

Coram

The Hon'ble Mr.Justice T.S. SIVAGNANAM

W.P.No.15967 of 2017
and W.M.P.Nos.17269 and 28726 of 2017

M/s.Prodapt Solutions Private Limited,
Prince Info City - II No.283/4,
4th Floor, Rajiv Gandhi Salai (OMR)
Kandanchavadi, Chennai - 600 096
Rep. by its Managing Director
Shir Vedant Jhaver .. Petitioner

vs

The Deputy Commissioner of Income Tax,
Corporate Circle - 5(2),
Chennai - 600 034. .. Respondent

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarifed Mandamus, calling for the records of the respondent for the assessment year 2010-11 and quash the impugned order dated 04.05.2017 passed u/s. 143(3) r/w. 254 and direct the respondent to pass fresh revised assessment order to give effect to the order of the Tribunal dated 16.01.2017 in I.T.A.No.1015/Mds/2015 for the assessment year 2010-11 after affording fair and reasonable opportunity of hearing.

For Petitioner : Mr.Vikram Vijayaraghavan
for M/s.Subbaraya Aiyar Padmanabhan
& Ramamani

For Respondent : M/s.Hema Muralikrishnan
Senior Standing Counsel

O R D E R

The petitioner, a Private Limited Company engaged in the business of Software Services, Products and Operations with their main focus on telecom segment has approached this Court challenging an assessment order for the year 2010-2011 under the provisions of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

2.A draft assessment order based on the directions issued by the Dispute Resolution Panel (DRP) was finalized and an assessment order under Section 143(3) r/w. 144C of the Act was passed on 20.02.2015 determining the petitioner's total income at Rs.5,37,42,149/- and the tax thereon at Rs.2,52,34,447/-. The petitioner preferred an appeal before the Income Tax Appellate Tribunal (hereinafter referred to as "the Tribunal") challenging the said order of assessment and the Tribunal by order dated 16.01.2017 remitted the matter to the file of the respondent with certain directions after providing an opportunity of being heard to the petitioner before giving effect to the order of the Tribunal. The respondent sent a communication dated 21.03.2017 stated to have been enclosed with relevant documents and details and sought for issuance of revised assessment order by giving effect to the order of the Tribunal with regard to the issues which has been remanded to him for consideration. The respondent issued notice dated 21.03.2017 fixing the date of hearing on 27.03.2017 and this notice was received by the petitioner on 24.03.2017.

3.The petitioner's case is that when they appeared before the respondent on 27.03.2017, they were informed that an order giving effect to the Tribunal's order had already been passed on 22.03.2017 whereby the addition of Rs.1,57,00,000/- under Section 40(a)(ia) of the Act was deleted as per the order passed by the Tribunal. The petitioner was further informed that with regard to the other issues, a separate order would be passed. It is submitted that the order dated 22.03.2017 was made without giving an opportunity of being heard to the petitioner and as the first date of hearing was fixed on 27.03.2017 and the order having been passed much earlier to the said date clearly shows that there was no opportunity. It is further submitted that on 27.04.2017, the petitioner received notice dated 24.04.2017 fixing the hearing date as 28.04.2017. It is stated that there was no hearing on 28.04.2017 as the respondent was on leave and the hearing was adjourned to

03.05.2017 and on that date, hearing took place and second order dated 04.05.2017 was passed disallowing the three items for which the Tribunal had remanded the matter. Therefore, the petitioner is before this Court challenging the order dated 04.05.2017 and for a consequential direction to pass revised fresh assessment order to give effect to the order of the Tribunal dated 16.01.2017.

4.Though in paragraph No.11 of the affidavit filed in support of the writ petition, the petitioner states that they are challenging the assessment order dated 22.03.2017 and 04.05.2017, the prayer in the writ petition is confined only to the order dated 04.05.2017. This is presumably because the order dated 22.03.2017 enures to the favour of the petitioner as the respondent has deleted the addition made under Section 40(a)(ia) of the Act as per the order of the Tribunal.

5.Mr.Vikram Vijayaraghavan, learned counsel appearing for M/s.Subbaraya Aiyar Padmanabhan & Ramamani, learned counsels for the petitioner submitted that the provisions of the Income Tax Act do not provide for passing two orders while giving effect to the order passed by the Tribunal and there is no provision under the Act which empowers the Assessing Officer to pass multiple orders in respect of the same assessment year. Therefore, it is submitted that the impugned order is invalid and unsustainable in law. It is further submitted that no opportunity of being heard was afforded to the petitioner and therefore the impugned order dated 04.05.2017 is in clear violation of the principles of natural justice. Further, the respondent did not consider the voluminous documents filed before him, more particularly, the STPI approval which was granted by the competent authority and specifically referred to in the submissions made by the petitioner vide their letter dated 21.03.2017. Further, it is submitted that the petitioner had filed the paper book which they had submitted before the Tribunal which contains all relevant details which were not considered by the respondent while passing the impugned assessment order. Further, the respondent did not consider the scope of remand as ordered by the Tribunal and the findings rendered are wholly unsustainable. On the above ground, the learned counsel seeks for setting aside the impugned order.

6.M/s.Hema Muralikrishnan, learned Senior Standing Counsel for the respondent submitted that the petitioner cannot be aggrieved by the first order passed by the Assessing Officer dated 22.03.2017 giving effect to the order passed by the Tribunal and thereby deleting the additions under Section 40(a)(ia) of the Act. Further while passing the first order dated 22.03.2017, the respondent specifically stated that a separate order will be passed later with regard to the other issues and accordingly opportunity was granted to the petitioner and the petitioner participated in the personal hearing which culminated in the impugned order dated 04.05.2017 and if the petitioner is aggrieved by the impugned order, he has to prefer an appeal and the writ petition is not maintainable. Further, it is submitted that in the personal hearing fixed on 03.05.2017, the authorized representative of the petitioner appeared and when he was questioned about the commencement of the business operations in January 2000 and claiming depreciation for the assessment year 2000-2001, the authorized representative did not have any answer and in the course of hearing on 03.05.2017, the assessee did not produced any evidence and therefore the respondent was justified in passing the impugned order. Further it is submitted that though the petitioner stated that the Assessing Officer has merely assumed that lease line charges paid by the assessee to TATA communications and Reliance Communications are in the nature of royalty and no evidence was considered by the Assessing Officer to substantiate the disallowance. Though the petitioner in their representation dated 21.03.2017 stated that they are submitting the copies of the agreement entered into with the service providers as Annexure III to the said letter, they did not enclosed the particulars with regard to those two service providers but furnished the particulars relating to Bharti Airtel Limited. Further it is submitted that the petitioner did not produced any proof so as to delete the disallowance under Section 36(1)(iii) of the Act. Further it is submitted that the STPI approval was only for a bonded warehouse and therefore the respondent was justified in completing the assessment in terms of the impugned order.

7.The learned counsel appearing for the petitioner in reply would reiterate that multiple orders cannot be passed and there is a bar under Section 143(3) r/w. 254 of the Act and if there are two orders in respect of one assessment years, the assessee will not be in a position to decide as to against which order he has to file an appeal. Therefore, it is submitted that the matter should be remanded for fresh consideration to the Assessing Officer.

8.Heard the learned counsels for the parties and perused the materials placed on record.

9.As noticed above, the petitioner has challenged the assessment order dated 04.05.2017 passed under Sections 143(3) r/w. 254 of the Act and seeks for a consequential direction to pass revised assessment order to give effect to the order of the Tribunal dated 16.01.2017 for the assessment year 2010-2011. Though the learned counsel for the petitioner during the course of argument submitted that multiple assessment orders cannot be passed for the same assessment year as in the petitioner's case when the first order was passed on 22.03.2017 and the second order on 04.05.2017 (impugned), in the prayer sought for in the writ petition the petitioner has not challenged the order dated 22.03.2017. This is presumably due to the reason that the said order is in favour of the assessee. Therefore, this Court is not inclined to examine the contentions as to whether the respondent was justified in passing multiple orders as it has become a hypothetical question in the instant case on account of the conduct of the assessee in not raising any objection with regard to the order dated 22.03.2017. Therefore, the said contention as to whether the respondent could pass multiple assessment orders for the same assessment year has not been taken up for consideration. This leaves us with the only issue as to whether the petitioner had an effective opportunity before the respondent prior to the impugned order dated 04.05.2017 was passed. The Tribunal by its order dated 16.01.2017 while granting partial relief to the petitioner by deleting the addition under Section 40(a)(ia) of the Act remitted the matter to the Assessing Officer with certain directions. In paragraph No.7 of the order passed, it is stated that the petitioner had filed a paper book in support of the claim for deduction under Section 10A of the Act and the crux of the issue lies on the date on which the production is actually commenced.

10.The petitioner drew the attention of the Tribunal to the said paper book by pointing out the approval from the Software Technology Park of India (STPI) and explaining the grant of approval of setting up the unit followed by the green card and the copy of the approval under STP scheme issued by the Ministry to the petitioner on 30.03.2000 and further letter requesting the bonding between the customs authorities filed on 17.05.2000 for which approval was granted by the STPI on 18.03.2000. The petitioner filed a letter addressed to the STPI on 26.06.2000 intimating the commencement of operations from 07.06.2000 to support their stand that they have commenced the operations in the financial year 2000-2001. The Tribunal noted that the Assessing Officer relied only on the facts based on Form 56F wherein it has been mentioned that the production commenced on 21.01.1999 relating to assessment year 1999-2000 as first year. The Tribunal held that the revenue could not substantiate with any evidence before it that the production was commenced in the assessment year 1999-2000 but relied only on Form 556F filed by the assessee. Thus the Tribunal held that considering the apparent facts, material record and the paper book filed the matter has to be re-examined by the Assessing Officer as these facts were not mentioned in the order of the DRP and it is not clear as to whether the assessee had filed these details before the DRP or before the Assessing Officer to substantiate its claim. Therefore, the Tribunal remanded the issue to the file of the Assessing Officer to verify the genuineness after providing an opportunity of hearing to the assessee. With regard to the issue pertaining to the claim that communication charges are paid to Indian Companies in respect of the lease lines, the Tribunal opined that the matter has to be verified by the Assessing Officer and accordingly set aside the order of the Assessing Officer on the said issue for the limited purpose to examine the nature of charges and verify whether this income has been offered in the hands of the recipients and the assessee to be afforded an opportunity before passing an order.

11.In the next issue with regard to advance to subsidiary companies without charging any interest, the Tribunal held that one more opportunity has to be provided to the assessee to explain the commercial expediency of the said transactions with the subsidiary company before the Assessing Officer and accordingly remitted the dispute of interest disallowance made by the Assessing Officer on M/s.Podapt Corporation Inc., USA, M/s.Prodapt Technology Holdings Private Limited and M/s.Southern Group Industries Private Limited to verify and pass orders after affording an opportunity to the assessee. The petitioner filed a letter before the Assessing Officer on 21.03.2017 requesting the respondent to pass a giving effect to order pursuant to the directions issued by the Tribunal. As observed by the Tribunal, the Assessing Officer was required to examine the documents filed by the assessee in the form of a paper book and other verifications to be done and a decision be taken after affording an opportunity of personal hearing. However, the respondent passed an order dated 22.03.2017 giving effect to the order of the Tribunal thereby deleting the addition under Section 40(a)(ia) of the Act as directed by the Tribunal. While doing so, the Assessing Officer specifically stated that with regard to the other issues which have been remitted for his consideration, separate order will be passed. The petitioner's case is that they are unaware about the said order and only when they attended the hearing on 27.03.2017, they were informed about the same and they obtained a copy from the Assessing Officer. However, this order is not put to challenge as it is in favour of the assessee. Subsequently, the hearing date was fixed on 28.04.2017 on which date the hearing did not take place on account of the non-availability of the Assessing Officer. Subsequently, the hearing was posted on 03.05.2017. It appears that on 03.05.2017, the authorized representative of the petitioner referred to the paper book which they had filed before the Tribunal which was noted by the Tribunal and requested the Assessing Officer to give effect to the directions issued by the Tribunal by deciding the matter in their favour. However, the respondent has come to the conclusion that the assessee did not produced any further evidence and they stated that they have nothing further to produce and passed the impugned order on the very next day i.e. 04.05.2017.

12.In my considered view, when there is a specific direction by the Tribunal to re-examine the matter in a particular manner, the Assessing Officer is bound to scrupulously follow the directions of the Tribunal. The direction of the Tribunal is binding on the Assessing Officer. Therefore, to conclude that no further evidence was produced by the petitioner may not be the correct approach to be adopted. On the given set of documents, the Assessing Officer was bound to cause verification of the details and ascertain the genuineness and then take a decision. However, while passing the impugned order this has not been done. The Assessing Officer has made a verification that with regard to the date of commencement of production except for the letter the petitioner has not produced any document. However, the petitioner's case is that the paper book which was filed by them before the Tribunal and also placed before the Assessing Officer contained the copy of the order of approval granted by the STPI which the respondent has not considered. In this regard, the learned counsel for the petitioner has drawn the attention of this court to the orders of approval of the STPI dated 18.03.2000. Thus, I find that the impugned order has been passed without adhering to the directions issued by the Tribunal and the chronology of dates and events would show that the petitioner did not have adequate opportunity to put forth their submissions. Therefore, it is a fit case where the matter should be remanded for re-consideration by the Assessing Officer.

13.For the above reasons, the writ petition is allowed, the impugned order is set aside and the matter is remanded to the Assessing Officer for fresh consideration who shall fix a date for personal hearing, consider the documents filed in the form of paper book and after affording an opportunity of hearing to the authorized representative and re-do the assessment in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

08.12.2017

cse
Index :Yes/No
Internet:Yes/No
Speaking Order/Non-Speaking Order

To

The Deputy Commissioner of Income Tax,
Corporate Circle - 5(2),
Chennai - 600 034.

T.S.SIVAGNANAM, J.

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Pre-Delivery Order in

W.P.No.15967 of 2017
and W.M.P.Nos.17269 and 28726 of 2017

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