IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2017

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.25934 of 2008 & M.P.No.1 of 2008

M/s.Fuller India Ltd., Now known as
M/s.FLS Automation India (P) Ltd.,
rep. by its Managing Director & CEO,
AndersChristian Bech,
"FL Smidth House, No.34, Egatoor,
Rajiv Gandhi Salai, Siruseri,
Old Mahabalipuram Road,
Kelambakkam, Tamil Nadu-603 103. ... Petitioner

Vs.

1. Assistant Commissioner of Income-tax,
   Central Circle III (2),
   46/108, Mahatma Gandhi Road,
   Nungambakkam, Chennai-600 034.

2. Commissioner of Income Tax,
   Central Circle III,
   46/108, Mahatma Gandhi Road,
   Nungambakkam, Chennai-600 034. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the records of the proceedings dated 23.10.2008 for the assessment year 1997-98 on the file of the first respondent and quash the same.

For Petitioner : Mr.M.P.Senthil Kumar
For Respondents : Mr.S.P.Srinivas,
Senior Standing Counsel

O R D E R

Heard Mr.M.P.Senthil Kumar, learned counsel for the petitioner and Mr.A.P.Srinivas, learned Senior Standing Counsel for the respondents.

2.The petitioner has filed this writ petition challenging an order dated 23.10.2008, by which the objection filed by the petitioner to the re-opening proceedings has been rejected and the petitioner has been directed to file his return of income for fresh assessment.

3.The question of law, which is involved in this case is whether the warranty provision is an allowable deduction. In respect of the assessment year 1999-2000, identical issue was raised and in the regular assessment, it resulted in an order against the petitioner dated 28.03.2002. Challenging the said order, the petitioner filed appeal before the Commissioner (Appeals), who held against the petitioner and passed an order on 31.12.2002. The petitioner filed further appeal to the Income-tax Appellate Tribunal in I.T.A.No.582/Mds/2003, which appeal was allowed by order dated 29.09.2003. Challenging the said order, the Revenue preferred Tax Case (Appeal) No.341 of 2004 and the Hon'ble Division Bench by judgment dated 09.06.2009, following the decision of the Hon'ble Supreme Court in the case of M/s.Rotork Controls India (P) Ltd. v. Commissioner of Income Tax Reported in [2009] 314 ITR 62 (SC), dismissed the appeal filed by the Revenue and held that substantial question of law having been answered by the Hon'ble Supreme Court, nothing survives in the Revenue's appeal. The Revenue filed Special Leave Petition No.4446 of 2010 against the judgment, which was dismissed by order dated 29.03.2010.

4.Similar question arose for the assessment years 2000-01, 2002-03 & 2003-04 in respect of the assessee's sister organizations viz., FL Smidth Ltd. for the assessment year 2000-01, FL Smidth Automation India (P) Ltd., for the assessment year 2002-03 and FL Smidth Minerals Pvt Ltd for the assessment year 2003-04. In respect of all these assessment years, the assessees have succeeded up to this Court and all the tax case appeals were dismissed by the Hon'ble Division Bench of this Court and in respect of the assessment year 2000-01, S.L.P. was dismissed on 06.11.2017 for warranty provisions. The details are furnished in the following tabulated statement:-

Sl. No.	Name	A.Y.	TCA No.	Madras High Court judgment	Depart's SLP dismissed
1	FL Smidth Ltd	1999-00	341/2004	09.06.2009	Dismissed on 29.03.2010
2	FL Smidth Ltd	2002-03	35/2003	07.12.2009	
3	FL Smidth Ltd	2003-04	927/2008	07.12.2009	
4	FLS Automation India (P) Ltd	2002-03	1990/2008	07.12.2009	
5	FL Smidth Ltd	2000-01	263/2007	07.12.2009	Dismissed on 06.11.2007
6	FL Smidth Minerals Pvt Ltd	2003-04	38/2010	03.06.2013	

5.Since the question of law, which arises for consideration has been answered in favour of the assessee, the writ petition has to be necessarily disposed of in terms of the said decision of the Hon'ble Division Bench.

6.Learned Senior Standing Counsel for the respondents submits that the assessee can very well place all the decisions before the assessing officer and participate in the assessment proceedings and the assessing officer may be directed to take a decision in the matter.

7.In my considered view, such procedure is uncalled for, as the only issue, which arises for consideration, as could be seen from the reasons for re-opening, is the issue as to whether warranty provision is an allowable deduction and this having been answered in favour of the assessee for the subsequent years, it would amount to causing prejudice to the assessee by directing them to face the assessment proceedings.

Thus, for the above reasons, this writ petition is allowed and the impugned order is quashed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

abr

To

1. The Assistant Commissioner of Income-tax,
   Central Circle III (2),
   46/108, Mahatma Gandhi Road,
   Nungambakkam, Chennai-600 034.

2. The Commissioner of Income Tax,
   Central Circle III,
   46/108, Mahatma Gandhi Road,
   Nungambakkam, Chennai-600 034.

+1cc to Mr.N.Muthukumar, Advocate, S.R.No.90768
+1cc to Mr.S.P.Srinivas, Advocate, S.R.No.90568

W.P.No.25934 of 2008

ssi(co)
cs/18/01/18