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

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W.P.(C) 5500/2015

ORACLE SYSTEMS CORPORATION

...Petitioner

Through: Mr. M.S.Syali, Sr. Advocate with Mr.
Mayank Nagi, Mr. Tarun Singh, Advocates

Versus

DEPUTY DIRECTOR OF INCOME
TAX CIRCLE 2(1), INTERNATIONAL
TAXATION NEW DELHI

...Respondent

Through: Mr. Dileep Shivpuri, Sr. Standing
Counsel with Mr. Sanjay Kumar, Advocate

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE CHANDER SHEKHAR

ORDER

30.05.2017

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Dr. S. Muralidhar, J.:

1. Oracle Systems Corporation has filed this writ petition under Article 226 of the Constitution praying that the notice dated 26th March, 2014 issued under Section 148 of the Income Tax Act ('the Act') seeking to re-open the assessment for the Assessment Year ('AY') 2007-08 be quashed.

2. It must be noted at the outset that when this writ petition was listed on 26th May, 2015, while directing notice to be issued in the petition, an interim order was passed staying the further proceedings pursuant to the aforementioned notice dated 26th March, 2014.

3. The return as originally filed by the Petitioner (hereafter 'Assessee'), a US based corporation, for AY 2007-08 was picked up for scrutiny. A reference was made by the Assessing Officer (AO) to the Transfer Pricing Officer (TPO) after the receipt of whose report a draft assessment order was passed under Section 144 C of the Act on 31st December 2010. The reference to the TPO was regarding (i) royalty received for licensing of Oracle software products to its subsidiary in India i.e. Oracle India Pvt. Ltd. (OIPL) and (ii) interest on delayed payment of royalty. In view of the directions of the Dispute Resolution Panel (DRP) part relief was granted to the Assessee in the final assessment order passed by the AO on 27th September 2011. Later a rectification order was passed under Section 154 of the Act on 7th March, 2014 rectifying the assessed income as Rs.639,52,51,929/-. Aggrieved by the additions made in the final assessment order, the Assessee filed appeals before the ITAT.

4. On 26th March 2014, notice under Section 148 was issued to the Assessee by the Deputy Director of Income Tax, Circle 2(1) International Taxation, New Delhi (hereafter the AO) seeking to reopen the assessment for AY 2007-08. The reasons for re-opening were communicated to the Petitioner by the AO by letter dated 1st September, 2014.

5. The reasons referred to the information received from the AO of OIPL regarding the assessment proceedings for AY 2007-08. In those proceedings the AO had asked OIPL to show cause as to why the amount credited by OIPL to OSC (the Assessee herein) as an expense, which was remaining

unpaid as on 31st March, 2007 of Rs. 3,58,49,715/- on account of 'incoming shared service charges' should not be disallowed under Section 40(a)(i) of the Act for non deduction of tax under Section 195. The AO of OIPL ultimately disallowed the abovementioned incoming shared service charge.

6. In the reasons it was recorded that the Assessee herein had failed to offer for taxation the corresponding amount either separately or as royalty income in the form of 'incoming shares service charges paid by 'OIPL to OSC', in its return of income filed for the AY 2007-2008.

7. The reasons further stated that the Assessee had failed to disclose/include to offer for tax an amount of Rs.2,92,63,854/- either separately or as excess royalty income which had been paid and booked as an expense by OIPL to OSC on account of 'purchase of master copy' in its return of income filed for AY 2007-2008.

8. In the objections filed against the assumption of jurisdiction under Section 148 of the Act, the Assessee pointed out *inter alia* that the findings recorded in the draft assessment order passed by the AO of the OIPL which formed the basis for triggering of the notice to the Assessee herein under Section 148 of the Act stood reversed by the DRP by its order dated 29th August, 2014 for AY 2007-2008 in the case of OIPL. Therefore, a live nexus could not be established between the material available and the reasons recorded for reopening the assessment. The reopening was only based on the above 'borrowed satisfaction' of the AO of OIPL which in any event ceased to exist.

9. However, in the present case, on 23rd March 2015, the AO disposed of the objections holding them to be devoid of merits. Thereafter, the present writ petition was filed.

10. It is pointed out by Mr Syali, learned Senior Counsel appearing for the Assessee, that in respect of both the items constituting the reasons for reopening of the assessment, the DRP had on 29th August, 2014 disagreed with the findings recorded in the draft assessment order dated 23rd November, 2013 passed by the AO of OIPL. In fact, the DRP had deleted the additions proposed by the AO of OIPL in respect of the said two items. Thus, findings recorded by the AO of OIPL in the draft assessment order did not culminate into a final assessment order. The very basis of reopening of the assessment in the present case was, therefore, non-existent.

11. Mr Syali further pointed out that even for AY 2006-2007 in case of OIPL, the DRP by an order dated 16th August, 2013 disagreed with the draft assessment order of the AO. He accordingly submitted that the assumption of jurisdiction under Section 147 of the Act was bad in law as it suffered from non-application of mind by the AO to the material available on record. There was no fresh tangible material for invoking Section 147 of the Act. Further, there was no failure of the Assessee/Petitioner to disclose fully and truly all material facts.

12. Apart from raising the preliminary objection as regards the maintainability of the present writ petition on the ground that the Assessee could go in for the regular assessment and raise all these objections, Mr

Dileep Shivpuri, learned Senior Standing counsel for the Revenue was unable to dispute the fact that the DRP had by its order dated 29th August, 2014 disagreed with the draft assessment order of the AO of OIPL for the very same AY 2007-2008.

13. The Court finds that the order passed by the AO on 23rd March, 2015 disposing of the objections of the Assessee has failed to deal with the above issue. As rightly pointed out by the Assessee even for AY 2006-2007, the DRP by order dated 16th August 2013, disagreed with the draft assessment order dated 2nd November, 2012 of the AO of OIPL wherein identical additions were suggested. The DRP held that the said two items viz. (i) incoming shared service charges and (ii) alleged excess payment for software media pack/master copy, were not income in the hands of the Assessee herein. On the basis of the above order of the DRP, the final assessment order for AY 2006-2007 in the case of OIPL was passed on 30th November, 2013.

14. This was followed in 2007-08 where again the draft assessment order of the AO of OIPL was not concurred with by the DRP. The DRP's order dated 29th August, 2014 held that in respect of both the issues no income resulted in the hands of the Assessee herein. This order was acted upon and the final assessment order was passed by the AO on 30th October, 2014.

15. With the very basis of the reopening of the assessment in the present case having been eroded, the Court hereby sets aside the impugned notice dated 26th March, 2014 and the consequent order dated 23rd March, 2015

passed by the AO disposing of the Assessee's objections.

16. The writ petition is allowed in above terms, but in the circumstances with no orders as to costs.

S. MURALIDHAR, J

CHANDER SHEKHAR, J

MAY 30, 2017

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