In the High Court of Judicature at Madras

Dated : 12.07.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.13815 of 2011
and WMP.Nos.7943 and 7944 of 2017

M/s.Alden Prepress Services Private Limited
Rep. by its Managing Director
Shri.R.Gowrishanker
'B' Block, 20th North Usman Road
T.Nagar
Chennai - 600 017 ... Petitioner

Vs

1.Deputy Commissioner of Income Tax
Transfer Pricing Officer IV
121, Mahatma Gandhi Road
Chennai - 600 034

2.Deputy Commissioner of Income Tax
Company Circle I (1)
No.121, Mahatma Gandhi Road
Chennai - 600 034 ...Respondents

Writ petition filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the proceedings under Section 92CA(2) in C.R.No.TPO-IV/A.Y 2007-08 dated 23.03.2011 on the file of the 1st respondent, quash the same and further to direct the second respondent to dispose all the objections filed by the petitioner in terms of Section 152(2) of the Act.

For Petitioner : Mr.R.Sivaraman

For Respondents: Ms.Hema Muralikrishnan
and Mr.Naveen Duraibabu

ORDER

Heard Mr.R.Sivaraman, learned counsel for the petitioner and Mr.VMs.Hema Muralikrishnan and Mr.Naveen Duraibabu, learned standing counsels appearing for the respondents.

2. The petitioner has filed this writ petition challenging the proceedings of the first respondent dated 23.03.2011 issued under Section 92CA (2) of the Income Tax Act, 1961 and to direct the second respondent/Assessing Officer to dispose of the objections filed by the petitioner under Section 152(2) of the Act.

3. The dispute in the instant case lies in a very narrow compass. The second respondent vide notice dated 09.09.2009 issued under Section 148 of the Act proposed to reassess the income for the Assessment year 2007-08. The petitioner, by representation dated 05.10.2009, stated that the reopening of the assessment was not justified and sought reasons for reopening. Pursuant to such representation, the second respondent, vide letter dated 20.10.2009, communicated the reasons for re-opening on the following lines:

> "1. The Assesses company is in the business of providing typesetting services to its parent company located in United Kingdom. It is seen from the report of the Accountant u/s.92E relating to international transactions in Form 3CEB that the amount receivable for the services rendered by the assessee to its parent company as computed having regard to the arms length price is Rs.18,11,61,271, as against an amount of Rs.13,95,87,245/- recorded in the books of account. This information is available in Column No.10(c) of the report in Form 3 CEB.
>
> 2.The arms length price as computed by the assessee by itself is higher than the sale consideration received by the assessee from its associated enterprise situated outside India. However, no adjustment has been made by the assessee in this regard in the memo of income. Therefore, I have reasons to believe that income chargeable to tax has escaped assessment."

4. On receipt of the reasons for reopening, the petitioner submitted their objections dated 26.04.2010. When the objections were pending disposal before the second respondent, the impugned notice dated 23.03.2011 has been issued by the first respondent under Section 92CA(2) of the Act.

5. The petitioner's case is that the second respondent is bound to dispose of the objections raised by the petitioner vide letter dated 26.04.2010 and before the objections are disposed of, the first respondent, namely the Transfer Pricing Officer, has no jurisdiction to issue the impugned notice.

6. The learned standing counsel appearing for the respondents would vehemently contend that when the reasons for re-opening were communicated, the Assessee filed a fresh form No.3CEB and therefore, the second respondent had referred the matter to the first respondent for considering the transfer pricing documents and therefore, the first respondent has issued the impugned notice. Only after the first respondent takes a decision in the matter, the second respondent would be in a position to take a decision on the reopening proceedings.

7. In my considered view, the Assessing Officer has missed out a very important aspect with regard to powers exercisable by the Assessing Officer and the powers exercisable by the Transfer Pricing Officer. Admittedly, the reopening of the assessment for the relevant years was at the instance of the Assessing Officer and for the reasons set out in the letter dated 20.10.2009. Therefore, if the second respondent had reason to believe that the income chargeable to tax is escaped assessment, upon objections being filed by the Assessee, the Assessing Officer is bound to dispose of the objections in the manner known to law. In fact, it is the mandate as per the judgment of the Hon'ble Supreme Court in GKN Driveshafts (India) Ltd. Vs. ITO [reported in (2003) 259 ITR 19]. Thus, it is only thereafter, if the second respondent chooses to refer the matter to the Transfer Pricing Officer, such procedure could have been adopted. Thus, without disposing of the petitioner's objection by passing a speaking order, the second respondent could not have straight away referred the matter to the first respondent for consideration.

8. Hence, for the above reasons, this Court is inclined to issue the following directions:

This writ petition is disposed of by directing the first respondent to keep the impugned notice in abeyance and the second respondent is directed to dispose of the petitioner's objection dated 26.04.2010 by passing a speaking order and proceed in accordance with law. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

gpa

To

1.The Deputy Commissioner of Income Tax
   Transfer Pricing Officer IV
   121, Mahatma Gandhi Road
   Chennai - 600 034.

2.The Deputy Commissioner of Income Tax
   Company Circle I (1)
   No.121, Mahatma Gandhi Road
   Chennai - 600 034.

+1cc to Hema Muralikrishnan, Advocate Sr.45995

Writ Petition No.13815 of 2011
and MP.No.1 of 2011

srg 25/07/2018