IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.09.2018

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THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition Nos.4695 & 4696 of 2018
and
WMP No.5802 of 2018

CET Power Solutions India Pvt. Ltd.,
No.2/295, DRR Avenue, AUDCO Nagar
Kattupakkam, Chennai-600 056.
Represented by its Director
Mr.Pari Chandran

..Petitioner
(in WP.Nos.4695 & 4696 of 2018)

Vs.

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

..Respondent
(in WP.Nos.4695 & 4696 of 2018)

Writ petition No.4695 of 2018 filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records of the order dated 31.12.2017 in PAN No.AADCC2912P, passed by the respondent for the assessment year 2011-2012 and quash the same.

Writ petition No.4696 of 2018 filed under Article 226 of the Constitution of India, for issuance of a Writ of Prohibition, prohibiting the respondent from passing any fresh assessment order in relation to the assessment year 2011-2012 qua the petitioner, as the time period fixed for passing an assessment order under Section 144C(13) of the IT Act has already elapsed.

For Petitioner in both petitioners : Mr.Karthik Sundaram

For Respondent in both petitioners : Mrs.Hema Muralikrishnan Senior Standing Counsel

COMMON ORDER

Both these writ petitions are filed by the very same petitioner. WP.No.4695 of 2018 has been filed challenging the order of the respondent dated 31.12.2017 in respect of the assessment year 2011-2012. WP.No.4696 of 2018 has been filed seeking prohibition against the respondent from passing any fresh assessment order in relation to the assessment year 2011-2012, as the time period fixed for passing the assessment order under Section 144C(13) of the Income Tax Act, 1961, (for short "IT Act") has lapsed.

2. The short facts necessary for disposal of these writ petitions are as follows:

The petitioner is a company engaged in the manufacture of modular inverters and power systems. The petitioner is an Assessee under the respondent. They filed the original return of income for the assessment year 2011-2012 on 26.08.2011. The case was selected for scrutiny and a notice under Section 143(2) of the IT Act was issued to the petitioner. The Transfer Pricing Officer passed an order on 30.12.2014, determining the arm's length price of international transaction entered into by the Assessee. Consequent to the order of the Transfer Pricing Officer, since variation was proposed in the income of the Assessee, a draft assessment order was passed on 31.03.2015. The petitioner filed objection before the Dispute Resolution Panel against the said draft assessment order. The Dispute Resolution Panel issued certain directions on 28.12.2015. Consequently, the assessment order was passed by the respondent in terms of Section 143(3) of the IT Act on 21.01.2016 and the income of the petitioner was assessed to be Rs.1,85,13,549/-. The petitioner challenged the assessment order before the Income Tax Appellate Tribunal. By order dated 29.07.2016, the Tribunal remitted the issues back to the Dispute Resolution Panel to pass a speaking order on the disputed issues. Consequently, the Dispute Resolution Panel issued fresh directions on 28.12.2017. Thereafter, the respondent through the impugned proceedings passed a giving effect order, thereby arriving the assessed income as Rs.1,79,49,484/- for the assessment year 2011-2012. Challenging the said order dated 31.12.2017, the petitioner has filed the above writ petitions.

3. These writ petitions are opposed by the respondent, by filing a counter affidavit. Apart from raising very many contentions against the claim made by the petitioner, the respondent has specifically stated that the impugned order is an assessment order, duly passed in accordance with the provision under Section 144C(13) of the IT Act and thus, the petitioner has a remedy, by way of filing statutory appeal before the

Income Tax Appellate Tribunal against the same. Thus, the preliminary objection raised by the respondent is against the maintainability of these writ petitions.

4. The learned counsel for the petitioner mainly contended that the Income Tax Appellate Tribunal, while passing the order on 29.07.2016, though remitted the issues back to the Dispute Resolution Panel to pass a speaking order on the disputed issues, which order in effect has set aside the original order of assessment dated 21.01.2016 and therefore, the present impugned proceedings relying upon the said order of the assessment dated 21.01.2016 and consequently, giving effect to the order of the Dispute Resolution Panel dated 28.12.2017, cannot be sustained. In other words, according to the learned counsel for the petitioner, in the absence of any assessment order, the present impugned proceedings, cannot withstand the scrutiny of law, when the Tribunal has already set aside the original assessment order dated 21.01.2016.

5. On the other hand, the learned Senior Standing Counsel appearing for the respondent submitted that the Tribunal has not set aside the original order of assessment and on the other hand, it has only remitted the issues back to the Dispute Resolution Panel for passing a speaking order on the disputed issues. Therefore, she contended that the original order of assessment dated 21.01.2016 stands as it is and therefore, in view of the subsequent order passed by the Dispute Resolution Panel on 28.12.2017, giving certain directions, the respondent is justified in passing the present impugned order. Thus, she submitted that it is nothing, but giving effect to the order passed by the Dispute Resolution Panel in respect of the order of assessment already passed on 21.01.2016.

6. Heard both sides.

7. The crux of the dispute between the parties is with regard to the order of assessment passed on 21.01.2016, which according to the petitioner, was set aside by the Tribunal, whereas, according to the respondent, it is not so. Perusal of the order passed by the Tribunal dated 29.07.2016 would show that the Tribunal had finally observed, after making elaborate discussion on the issues involved, that it is inclined to remit the issues back to the Dispute Resolution Panel to pass a speaking order on the disputed issues. However, it is also stated that the appeal of the Assessee is partly allowed for statistical purposes. Now, the order of the Tribunal is sought to be interpreted in both ways as stated supra, with regard to status of the order of assessment dated 21.01.2016. In my considered view, it is for the petitioner to approach the Tribunal once again, by challenging the present impugned order,

by raising all these contentions, so that the Tribunal will be in a position to clarify the effect of the earlier order passed, while considering the appeal to be filed against the present impugned order. Needless to say that any such clarification by the Tribunal, with regard to the status of the assessment order dated 21.01.2016, would certainly have a bearing on further proceedings including the present impugned order. Since this Court finds that it is for the Tribunal to clarify the above position, without expressing any view on the merits of the contention raised by both parties in respect of the status of the assessment order passed on 21.01.2016, these writ petitions are disposed of, by granting liberty to the petitioner to file a statutory appeal against the impugned order dated 31.12.2017 before the Income Tax Appellate Tribunal, within a period of four weeks from the date of receipt of a copy of this order. If any such appeal is filed, the Tribunal shall consider the same and pass orders on its own merits and in accordance with law, uninfluenced by any of the observations made in these writ petitions and also without reference to the period of limitation. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

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

+1cc to Mr.Hema Amuralikrishnan, Advocate SR.No.63143

+1cc to Mr.Karthik Sundaram, Advocate SR.No.63117

W.P.Nos.4695 & 4696 of 2018

GMY(25/09/2018)