IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.03.2018

CORAM

THE HONOURABLE Mr. JUSTICE M.DURAISWAMY

W.P.No.1649 of 2018 &
W.M.P.Nos.2061 & 4137 of 2016

M/s.Wabco India Limited
(PAN:AAFCA6421P)
Rep. by its Chief Financial Officer
Mr.R.S.Raja Gopal Sastry
Plot No. 3(SP), III Main Road
Ambattur Industrial Estate
Chennai-600 058. .. Petitioner

v.

The Deputy Commissioner of Income Tax
International Taxation 1(1)
BSNL Building, Room No.407
4th Floor, Tower 1
No.16, Greams Road
Chennai-600 006. .. Respondent

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records in PAN :AABCC3182F, dated 09.01.2018 on the file of the respondent and quash the notice.

For Petitioner : Mr.Sandeep Bagmar
For Respondent : Ms. Hema Muralikrishnan,
Senior Standing Counsel

ORDER

Ms. Hema Muralikrishnan, learned Senior Standing Counsel takes notice for the respondent. By consent, the main writ petition itself is taken up for disposal at the admission stage itself.

2. The petitioner has filed the above writ petition to issue a Writ of Certiorari, to call for the records dated 09.01.2018 on the file of the respondent and to quash the notice.

3. The petitioner has challenged the show cause notice issued by the respondent dated 09.01.2018 under section 163(1)(c) of the Income Tax Act, 1961. By the impugned notice, the respondent called upon the petitioner to show cause as to why for the purpose of Sections 160 to 163 of the said Act, the petitioner should not be treated as the agent in terms of the provisions of Sections 163(1)(c) of the said Act.

4. The learned counsel appearing for the petitioner submitted that the impugned show cause notice issued by the respondent is without jurisdiction as the provisions of Sections 163(1)(c) of the said Act are not satisfied. The learned counsel also submitted that under Section 163 of the said Act , to treat a person in India as a representative assessee/agent of a non-resident, the non-resident must be in receipt of any income from or through the aforesaid person, in India and that in the petitioner's case, M/s.Clayton Dewandre Holdings Limited is not in receipt of any income from the petitioner. In these circumstances, the learned counsel submitted that show cause notice issued by the respondent is not sustainable.

5. Ms. Hema Muralikrishnan, learned Senior Standing Counsel appearing for the respondent submitted that the respondent had only issued a show cause notice calling upon the petitioner to show cause. Therefore, there is no necessity for interfering with the shows cause notice issued by the respondent and the petitioner may be called upon to submit his reply and the respondent may be directed to consider the same and pass orders, in accordance with law.

6. The contention of the learned counsel appearing for the petitioner that the show cause notice issued by the respondent is against the provisions of Sections 163(1)(c) of the Act can be raised in the reply to be submitted by the petitioner and in such an event, the respondent has to consider the same and pass orders. The petitioner has challenged only the show cause notice and the respondent has not passed any order so far. That being the case, by giving a reply to the respondent for the show cause notice dated 09.01.2018 would not prejudice the petitioner in any manner whatsoever. That apart, I do not find any reason to interfere with the show cause notice issued by the respondent for the reason that the petitioner has got a right to give a reply to the same.

7. In these circumstances, I do not find any merit in the writ petition. The writ petition is liable to be dismissed. Accordingly, the writ petition is dismissed. The petitioner shall give his reply to the show cause notice dated 09.01.2018, within a period of six weeks from the date of receipt of a copy

of this order and on receipt of the same, the respondent shall decide the matter, on merits and in accordance with law, after giving due opportunity of personal hearing to the petitioner and also taking into consideration the reply to be submitted by the petitioner independently, without taking into consideration the averments stated in the counter affidavit filed in the writ petition. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

Rj

To

The Deputy Commissioner of Income Tax
International Taxation 1(1), BSNL Building, Room No.407
4th Floor, Tower 1, No.16, Greams Road
Chennai-600 006.

+1cc to Ms.Hema Muralikrishnan,, Advocate, S.R.No.21060
+1cc to Mr.Sandeep Bagmar, Advocate, S.R.No.21551

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