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

\+ W.P.(C) 2251/2018 & CM APPL. 9301/2018 (stay)

ORACLE INDIA PVT. LTD. ..... Petitioner

Through: Mr. M.S. Syali, Sr. Advocate with Mr. Satyen Sethi, Mr. A.T. Panda and Mr. Hardeep Chawla, Advocates.

versus

THE PRINCIPLE COMMISSIONER OF INCOME TAX & ANR. ..... Respondents

Through: Mr. Zoheb Hossain, Sr. Standing Counsel with Mr. Deepak Anand, Jr. Standing Counsel for Revenue. Ms. Saakshi Agrawal, GP-UOI, Advocate for R-2.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A. K. CHAWLA

<u>O R D E R</u>

% **20.07.2018**

In other writ petitions [W.P.(C) 1110/2012, 2353/2013, 2500/204, 3765/2015, 735/2017 & 3630/2016] an identical issue – with respect to the validity of special audit and the terms and reference, was considered.

On 13.03.2018 it was directed as follows:-

"Learned counsel for the parties, on instructions, state that modified terms of reference for special audit are acceptable and may be taken on record. The modified terms of reference for the assessment years

('AYs') 2008-2009 to 2013-2014 signed by counsel for the parties are enclosed as annexure-A to this order and would be treated as a part of this order.

Learned counsel for the parties also agree that the special audit under Section 142(2A) of the Income Tax Act, 1961 would begin on 1.4.2018 with the audit for the AY 2008-2009. On completion of special audit for AY 2008-2009, special audit for the next AY, i.e., 2009-2010 will commence. Thereafter, on completion of the special audit for preceding year, special audit for the succeeding year would commence.

In order to ensure that there is no dispute or debate about limitation, it is directed that the interim orders staying special audit and assessment proceeding for the AY2009-2010 and subsequent years would continue till the special audit for the immediate preceding year is completed. This direction is acceptable to both the petitioner and the respondents. Interim order for the AY 2008-2009 would remain in force till 31.3.2018.

This statement and direction is justified and necessary, as simultaneous special audit for all years would create difficulties, cause inconvenience and would require huge manpower. Further, issues overlap and some issues may not require examination in view of finding in an earlier year. This would be an aspect to be examined and considered by the assessing officer ('AO') and the special auditor. The petitioner, of course, will be at liberty to approach the AO and the special auditor, on the basis of the audit or the assessment orders passed for the earlier year.

In case any issue cannot be resolved or settled, the parties can approach the court by way of an application in the present writ petitions. We also clarify that this consent order would not affect the advance pricing agreement proceedings, which are stated to be pending.

Writ petitions are accordingly disposed of, with no order as to costs."

Learned counsel for the Revenue submits that in the light of that order, the terms of reference may be appropriately amended. He relies upon the instructions conveyed to him vide letter dated 18.04.2018.

Accordingly, we have heard learned counsel for the parties and hereby direct that the modified terms of reference (which shall supersede the impugned terms of reference) for AY 2014-15, shall read as follows:-

Terms and Reference (Modified)
AY 2014-15

1. Examination of the accounts of the assessee-company so as to identify, quantify and apportion all common expense between its exempted and no-exempted undertakings;
2. To look into the nature of expenses under different heads and the compliance of TDS provisions in respect thereof with reference to the determination of applicable rate of TDS and status;
3. Examination of all the receivables and payables between the assessee-company and its parent company and calculate the interest, if any;
4. If the special auditor while conducting the special audit in respect of the above three issues, comes across any other issue which he ought to bring to the notice of the Assessing Officer, he may do so.

The special auditor shall adhere to these terms while carrying out the task of audit.

It is further clarified that the terms of the order of 13.03.2018 shall apply. The simultaneous special audit for all years would create difficulties and inconvenience, which might also cause overlapping, some issues may not need investigation or examination. The Assessing Officer (AO) and the special auditor may examine these aspects also. It is open to the assessee/petitioner to approach the AO and the special auditor on the basis of the audit and assessment orders passed in the earlier years. In the event, it is necessary to resolve any such incidental issue it is open to the parties to approach this Court.

The writ petition and the application are disposed of in the above terms.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

JULY 20, 2018
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