IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	05/04/2019
Delivered on	25/06/2019

CORAM:

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

W.P.No. 7542 of 2018 &
W.M.P.No.9387 of 2018

M/s.Cognizant Technology Solutions
India Pvt. Ltd.,
No.165, Eternity Building,
6th Floor, St. Mary's Road,
Chennai - 600 018. .. Petitioner

Vs.

The Commissioner of Income Tax,
Larger Taxpayer Unit,
7th Floor, Wanaparthy Block,
Aayakar Bhawan,
Nungambakkam, Chennai - 600 034. .. Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for records pertaining to F. No. Proceedings / CIT-LTU / CHE/2017-18, dated 21.03.2018 on the file of the respondent herein and quash the same.

* * *

For Petitioner : Mr.Gopal Subramanium
Senior Advocate
For Mr.Srinath Sridevan

For Respondent : Mr.G.Rajagopalan
Additional Solicitor General
Assisted by Mr.Karthik Ranganathan
Senior Standing Counsel
for Income Tax Department

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O R D E R

The show-cause notice seeking explanation / reply as to why the Assessment of AY-2014-2015 made under Section 143 (3) read with Section 92 CA of the Income Tax Act, (in short "Act") dated 31.12.2016, should not be treated as erroneous and prejudicial to the interest of the Revenue and consequently, set aside under Section 263 of the Act is challenged by the Cognizant Technology Solutions India Pvt. Ltd., in this Writ Petition.

2. The facts necessary for disposal of this case would run thus:-

The petitioner is a Company incorporated under the Companies Act in the year 1994 and it is engaged in the business of development of computer software and related services and export. In the year 2013, the petitioner purchased its own shares as buy-back under Section 77 A of the Companies Act at Rs.23,915.10/- per share. The petitioner completed the buy-back of shares on 22.05.2013 and filed Income Tax Return on 29.11.2014 for the Assessment Year 2014-15. The Deputy Commissioner of Income Tax, Large Taxpayer Unit-I, accepted the Return filed by the petitioner and passed orders on 31.12.2016.

3. In the year 2017, notices were issued to the petitioner's shareholders viz., Cognizant (Mauritius) Limited and Cognizant Technology Solutions Corporation, United States, on the ground of over valuation of shares. The shareholders of the petitioner have challenged the Draft Assessment Orders in W.P.Nos.1244 & 1245 of 2018.

4. Mr.Gopal Subramanium, learned Senior Counsel appearing on behalf of the petitioner would contend that the Income Tax Return of the petitioner was accepted after elaborate enquiry, but now it is sought to be reopened under Section 263 of the Act only to defeat the stand taken by the petitioner's shareholders in the Writ Petitions. It is the contention of the learned Senior Counsel that the grounds raised in the Writ Petitions are that the Income Tax Returns of the petitioner-Company was accepted and bifurcation of the share price into two parts is without authority of law and unless the issues are decided, the Department under the guise of exercising power under Section 263 of the Act cannot issue the impugned notice. The shares purchased under Section 77 A of the Companies Act cannot be regarded as dividend and the impugned notice has been issued in a hurried manner without providing sufficient time to the petitioner to send a reply and hence, it is liable to be set-aside.

5. In reply, Mr.G.Rajagopalan, learned Additional Solicitor General on behalf of the Revenue would argue that the order

impugned in this Writ Petition is only a show-cause notice and the petitioner has not raised any valid ground to set-aside the order and hence, the Writ Petition is liable to be dismissed.

6. In view of the elaborate orders passed in W.P.Nos.1244 & 1245 of 2018, touching all the issues, this Writ Petition stands dismissed, directing the petitioner to file necessary objections to the show-cause notice within a period of 15 days and on such receipt, the same shall be considered by meeting out each and every objections raised, on merits and in accordance with law. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

The Commissioner of Income Tax,
Larger Taxpayer Unit,
7th Floor, Wanaparthy Block,
Aayakar Bhawan,
Nungambakkam, Chennai - 600 034.

+1cc to Mr.Srinath Sridevan, Advocate, S.R.No.53011
+1cc to Mr.Karthik Ranganathan, Advocate S.R.No.52032

W.P.No. 7542 of 2018 &
W.M.P.No.9387 of 2018

RRS(27/06/2019)