IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.NO.29223 OF 2017
AND
W.M.P.NO.31475 OF 2017

M/s.Acme Commodities Pvt.Ltd.,
No.10, Plot No.17, Perumal Nagar,
1st Street, Nanganallur, Chennai 600 061
Rep.by its Director, K.R.Sangeetha .. Petitioner

vs.

1. Deputy Commissioner of Income Tax,
   Transfer Pricing Officer-1(1)
   Room No.504, BSNL Building Tower 1,
   No.16, Greams road,
   Chennai.

2. The Deputy Commissioner of Income Tax,
   Corporate Circle 1 (1),
   121, Mahatma Gandhi Salai,
   Nungambakkam, Chennai 600 034. .. Respondents

Prayer : Writ petition is filed under Article 227 of the Constitution of India, praying for a writ of certiorarified Mandamus calling for the records of the first respondent and quash the impugned order bearing File No.A-108/TPO-1(1)/A.Y.2014-15 dated 31.10.2017 of the Income Tax Act, 1961 for the Assessment Year 2014-15 on the file of the first respondent and directing the respondent to pass the order after giving the petitioenr adequate opportunity.

For petitioner : Mr.Wv.Balaji
For Respondents : M/s.Hema Murali Krishnan
Sr.Standing Counsel

O R D E R

Petitioner an income tax assessee is an importer of raw cashew nut in shells. The petitioner claims to be selling them as such and after further processing in the domestic market. The 1st respondent Deputy Commissioner of Income Tax, Transfer

Pricing Officer issued a Show Cause Notice dated 29.9.2017 to the petitioner for the Assessment Year 2014-15 and called upon the petitioner to show cause as to why Arms-Length Price (ALP) adopted by the petitioner in its international transaction should not be determined at Rs.147,47,64,740/- and why an adjustment of Rs. 5,39,22,216/- should not be made.

2. The petitioner had adopted Comparable Uncontrolled Price (CUP) as the Most Appropriate Method. The 1st respondent however felt that the raw cashew nut sold by the petitioner with that of the average annual rate of third-party was not reasonable and therefore the aforesaid method adopted by the petitioner was liable to be rejected.

3. The 1st respondent further felt that the petitioner had not submitted any supporting proof at which the Associated Enterprises adopted the price in its transaction with the 3rd parties. It was further stated that the petitioner had not substantiated the Comparable Uncontrolled Price (CUP) properly with reference to the contractual terms, economic circumstances and the business strategies etc.

4. Under the circumstances, the 1st respondent adopted transactional Net Margin Method (TNMM) in the said show cause notice dated 29.09.2017.

5. The petitioner replied to the above Show Cause Notice vide reply dated 19.10.2017 and 24.10.2017. Meanwhile, the 1st respondent vide email dated 27.10.2017 furnished documents. The petitioner also filed its further reply dated 30.10.2017 and another reply of the same date. On the following day, the impugned order has been passed by the 1st respondent.

6. It is the contention of the petitioner that the impugned order has been passed without the following principal of natural justice and new materials were relied while passing the impugned order.

7. Respondent in their counter have justified the impugned order and that on receipt of the reference under Section 92 CA of Income Tax Act, 1961 from the 2nd respondent, notice was issued by the 1st respondent on 07.11.2016 and the petitioner was heard on various dates on 09.02.2017, 20.02.2017, 01.03.2017, 22.03.2017, 17.07.2017, 07.08.2017, 25.09.2017, and 28.09.2017 respectively.

8. According to the respondents, the petitioner has not substantiated the Arm's-Length Price (Arm) through the Comparable Uncontrolled Price (CUP) as the Most Appropriate Method and that after issue of the Show-Cause Notice, the petitioner was heard through their newly appointed authorised

representatives who appeared on 25.10.2017 and presented an additional reply.

9. Though the 1st respondent has justified the impugned order on merits, from a reading of the impugned order, it is evident that the 1st respondent has relied upon the additional material which is in the form of a screenshot. The petitioner was not put to notice of the same before the impugned order came to be passed. Therefore, on this limited ground alone the impugned order is quashed and the case is remitted back to the 1st respondent to pass a speaking order. The content of the impugned order shall be treated as corrigendum to the notice dated 29.9.2017 issued by the 1st respondent.

10. Petitioner may therefore file their written representation if any, within a period of 30 days from the date of receipt of this order. The 1st respondent shall pass a speaking order within a period of 3 months thereafter, after hearing the petitioner in person or through its authorised representative.

11. In case, the petitioner fails to co-operate with the 1st respondent in the remand proceeding, the 1st respondent shall pass a fresh order based on available records within the aforesaid period.

12. The present writ petition stands disposed with the above observation. No cost. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

kkd

To

1. The Deputy Commissioner of Income Tax,
   Transfer Pricing Officer-1(1)
   Room No.504, BSNL Building Tower 1,
   No.16, Greams road, Chennai.

2. The Deputy Commissioner of Income Tax,
   Corporate Circle 1 (1),
   121, Mahatma Gandhi Salai,
   Nungambakkam, Chennai 600 034.

+1cc to Mr.Wv.Balaji, Advocate, S.R.No.103261
+1cc to M/s.Hema Murali Krishnan, Advocate, S.R.No.102701

W.P.No.29223 of 2017
and W.M.P.No.31475 of 2017

MP(CO)
CS/11/02/2020