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

\+ W.P.(C) 13336/2019 and C.M. No. 54161/2019

M/S. TSYS CARD TECH SERVICES LIMITED ..... Petitioner

Through: Mr. Deepak Chopra, Ms. Akansha Aggarwal and Mr. Rohan Khare, Advocates.

versus

DEPUTY COMMISSIONER OF INCOME TAX ..... Respondent

Through: Mr. Sunil Agarwal, Mr. Tushar Gupta and Ms. Priya Sarkar, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE SANJEEV NARULA

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

% **19.12.2019**

1. Issue notice. Learned counsel for the respondent accepts notice.

2. We have heard learned counsels and, in our view, the matter can be disposed of at this stage.

3. The petitioner has preferred the present writ petition to assail the initiation of re-assessment proceedings against it in terms of the impugned notice dated 30.03.2019 under Section 148 of the Income Tax Act for the Assessment Year 2012-13. The petitioner also assails the order dated 15.11.2019 rejecting the petitioner's objections preferred to the said re-assessment proceedings.

4. The case of the petitioner is that the petitioner is a company incorporated under the laws of Cyprus. It is engaged in the business of provision of information technology enabled services to the financial payments industry. The petitioner advanced a loan to its Indian group

company, namely TSYS Card Tech Services India Private Limited (TSYS India) under an External Commercial Borrowing (ECB) agreement, of US$ 2 million. Under the agreement, the petitioner was entitled to receive interest @ LIBOR plus 3% per annum. The petitioner claims that for the relevant previous year, i.e. Assessment Year 2012-13, it earned interest income of Rs.37,66,311/- from TSYS India under the aforesaid ECB loan.

5. The further submission of the petitioner is that the TSYS India deducted tax at source on interest payment @ 10%. Such interest income of the petitioner was liable to be taxed in India as per the provisions of the Indo-Cyprus DTAA under Article 11 (2) thereof. The petitioner states that under Section 115A(5), the petitioner was not obliged to file any income-tax return on the said interest income, since the tax on such interest income already stands deducted and deposited.

6. The respondent issued the notice dated 30.03.2019 under Section 148 of the Income Tax Act in relation to the Assessment Year 2012-13 to the petitioner, stating that the issuing officer has reason to believe that income chargeable to tax for the said Assessment Year has escaped assessment within the meaning of Section 147 of the Act.

7. The case of the petitioner is that the petitioner was not provided with the reasons for the said re-opening. In any event, the petitioner filed its objections on 03.07.2019, inter alia, raising the plea that the petitioner was not obliged to file income-tax return under Section 115A(5), since the income derived by it in India was the interest income on the ECB loan advanced by it to its Indian outfit, on which tax already stands deducted and deposited.

8. On 01.10.2019, the petitioner sent another response reiterating its submissions. The petitioner also claimed that as per Form 26AS, the petitioner had received interest income of Rs.37,66,311/-.

9. The objections of the petitioner were disposed of by the respondents by passing the impugned order dated 15.11.2019. From the reading of the said order, for the first time, the purported reasons for re-opening emerged. Pertinently, as per the order, the ITD database of the petitioner assessee revealed that the petitioner had received a sum of Rs.75,32,622/- during the Financial Year 2011-12 relevant to the Assessment Year 2012-13. The impugned order, however, does not at all advert to the petitioner's submission premised upon Section 115A (5) of the Act.

10. Learned counsel for the respondent had produced before this Court a print-out of the Form AS 26 details, as per which the total receipts of the petitioner during the Financial Year 2011-12 are to the tune of Rs.53,32,622/-. Learned counsel for the petitioner points out that in the said tabulation, there is duplication of six entries, which are mentioned in the Form 26 AS generated by the respondents and filed with the petition at page 51.

11. Firstly, the Assessing Officer – while passing the order, should have applied his mind to determine as to what has caused the discrepancy in the two Form 26 AS, i.e. the one relied upon by the petitioner, and the other relied upon by him. He has not adverted to the said discrepancy. Pertinently, both these forms have been generated by the system of the respondent Department itself. Secondly, there is not a whisper in the impugned order about the petitioner's submission that it was not obliged to

file the income tax return in the light of Section 115A(5) of the Act.

12. Therefore, it appears to us that the impugned order is a completely evasive exercise and the Assessing Officer has ducked the issues raised by the petitioner. The right to file objections to a proposed re-opening of assessment under Section 147 of the Income Tax Act is a meaningful right, and not a mere empty formality. While dealing with the objections, the Assessing Officer should apply his mind. The whole purpose of this exercise is to examine whether – in the light of the objections raised, the notice under Section 148 of the Act should be dropped, or pursued, so as to prevent the assessee from facing unnecessary and avoidable harassment and expenditure in the process of re-assessment and also to save a wasteful exercise being undertaken by the Assessing Officer.

13. In the present case, the Assessing Officer has completely failed to apply his mind to the submissions of the petitioner and also to examine as to how the two different Form 26 AS have been generated by the system.

14. We, accordingly, set aside the impugned order dated 15.11.2019 since it suffers from complete non-application of mind. The Assessing Officer shall proceed to pass a fresh order after dealing with the submissions raised by the petitioner in its objections.

15. The petition stands disposed of in the aforesaid terms.

VIPIN SANGHI, J

SANJEEV NARULA, J

DECEMBER 19, 2019

B.S.Rohella