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

% ***Date of Order: February 15, 2019***

\+ **W.P.(C) 1552/2019, C.M. Appl. No. 7151-7152/2019**

ORACLE INDIA PVT. LTD ..... Petitioner

Through: Mr. M.S. Syali, Senior Advocate with Mr. Satyen Sethi, Mr. Arta Trana Panda, Ms. Gargi Sethee, Advocates

versus

THE PRINCIPAL COMMISSIONER OF INCOME TAX, DELHI-7, & ANR. ..... Respondents

Through: Mr. Deepak Anand, Advocate for Mr. Zoheb Hossain, Senior Standing Counsel for Revenue

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE PRATEEK JALAN

S. RAVINDRA BHAT, J. (ORAL)

1. Issue Notice. Mr. Deepak Anand, Advocate, appearing on behalf of the respondent accepts notice of the petition as well as of the application.

2. The assessee seeks orders identical with orders made in relation to the special audits directed for Assessment Years 2015-16 and for the subsequent years. In previous orders, the court had heard other Writ Petitions including W.P.(C) No. 1110/2012, 2353/2013, 2500/2014, 3765/2015, 735/2017 and 3630/2016 as well as W.P.(C) No. 2251/2018, and directed that the modified terms of reference made under Section 142(2a) shall be followed in the special audit. In the present case, modified terms of reference have been indicated in the order of the Assessing Officer dated 31.12.2018. The previous order of this court passed in W.P.(C) No. 2251/2018, inter alia, was to the following effect:

"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 A Y 2008-2009. On completion of special audit for A Y 2008-2009, special audit for the next A Y, i.e. 2009-2010 will commence. Thereafter, on completion of the special audit for preceding year, special audit for the succeeding year would commence.

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 A Y 2009-2010 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 A Y 2008-2009 would remain in force till31.3.2018.

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."

3. This court also clarifies that in line with the previous orders made in all the said writ petitions, simultaneous special audit for all years will create difficulties and also result in overlapping of some issues that may arise during examination in all different years. The Assessing Officer and the Special Auditor may examine these aspects also. It is open to the petitioner/assessee to approach the AO and the special auditor on the basis of audit and the assessment order passed in the earlier years. In the event it is necessary to resolve any such incidental issue, the parties are at liberty to approach this court.

4. Furthermore, the Special Auditor shall adhere to the terms of reference (contained in the order dated 31.12.2018) while carrying out the task assigned to him.

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

S. RAVINDRA BHAT, J

PRATEEK JALAN, J

FEBRUARY 15, 2019
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