IN THE HIGH COURT OF JUDICATURE OF MADRAS

RESERVED ON : 09.09.2020

PRONOUNCED ON : 16.09.2020

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.32225 of 2016
and
WMP.No.27945 of 2016
& WMP.No.6009 of 2020

M/s.Kostal India Private Ltd.,
Plot No.11A, SIPCOT Industrial Complex,
Ranipet, Tamil Nadu-632 403
rep. by its Power of Attorney holder
Mr.Suresh Sthanu
residing at No.35/part, May Flower,
Thiruvalam Road, Karnampet,
Katpadi-632 519. ...Petitioner

.Vs.

1. The Dispute Resolution Panel-2,
   7th Floor, Income Tax Office,
   BMTC Building, 80 Feet Road,
   Koramnangala, Bangalore-580 095.

2. The Deputy Commissioner of Income-Tax (TPO) 2(1),
   5th Floor, BSNL Building, Tower-I,
   No.16, Greams Raod, Chennai-600 006.

3. The Assistant Commissioner of Income Tax,
   Circle-I, Vellore-632 001.

4. The Principal Commissioner of Income Tax-6,
   121, Mahatma Gandhi Road,
   Chennai-600 034.

5. The Commissioner of Income Tax (TP).
   121, Mahatma Gandhi Road,
   Chennai-600 034. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent and quash the impugned directions of the Dispute Resolution Panel-2 in

F.No.542/DRP-2-BNG/2015-16 under Section 143(3) read with Section 144(C) and 92CA of the Income Tax Act, 1961 in PAN:AADCK4872E dated 23.08.2016 for the Assessment Year 2012-13.

For Petitioner : M/s.Surana & Surana

For Respondents: Mr.Prabhu Mukund Arun Kumar
for Mrs.Hema Muralikrishnan

ORDER

With the consent of both the parties, the present Writ Petition is heard through Video Conferencing on 09.09.2020.

2. In the present case, Transfer Pricing Adjustments were made in connection to international transactions with the Associated Enterprises during the Assessment Year 2012-13. Consequent to the Transfer Pricing Order passed by the second respondent, the Assessing Officer has passed the Draft Assessment Order on 23.02.2016, to which the petitioner had filed his objections dated 22.03.2016 before the Dispute Resolution Panel (DRP). On 23.08.2016, the DRP had passed directions under Section 144(C)(5) of the Income Tax Act, confirming the "Transfer Pricing Order". The petitioner challenges the impugned directions of the DRP in the present Writ Petition.

3. The learned counsel for the petitioner had predominantly raised the ground of violation of the principles of natural justice during the course of the hearing before the DRP. According to the learned counsel, no effective opportunity was extended to the representatives of the petitioner before the DRP, which prompted him to file the present Writ Petition.

4. The learned Standing Counsel for the respondent, on the other hand, submitted that, due opportunity was extended to the Authorised Representatives (AR) of the petitioner on 01.08.2016 and 22.08.2016 and thereafter, the impugned directions were issued. Hence, she would submit that the Writ Petition does not require consideration since the option available to the petitioner would be to challenge the consequential assessment to be made by the Assessing Order under Section 144(C)(13), when the directions of the DRP are complied.

5. At the outset, it requires to be pointed out that the scope of interference to the directions of the DRP, is very limited, to include the grounds of violation of principles of natural justice and denial of fair and reasonable opportunity before the DRP. In order to establish extension of opportunity to the petitioner, the learned Standing Counsel for the

Department has produced the adjudication orders of the DRP dated 01.08.2016 and 22.08.2016, which reads as follows:

> "01.08.2016:
> Present Shree V.Abhiram and Mr.S.P.Chidambaram. Case partly heard. To provide detailed working of segmental data and annuals of the comparables by 10.08.2016. Case fixed for 22.08.2016 at 10.30 A.M.
>
> 22.08.2016:
> Present Shree V.Abhiram and Nithya Srinivasan. Case discussed. The Assessee was asked why not proportionate adjustment done by the TPO in calculating ALP be disregarded and ALP be calculated based on entire sales. The AR submitted that the TPO has been correctly worked out ALP by considering only international transactions and the same needs to be done in that manner only. Heard"

6. On perusal of the aforesaid hearings before the DRP, I am not in agreement with the submission of the learned counsel for the petitioner that they were not given due opportunity before the DRP. The adjudication of the aforesaid two hearing dates before the DRP is not disputed by them. In my view, the Authorized Representative of the petitioner has been given due opportunity and there is nothing on record to show that AR requested for further time or that they were otherwise deprived of an opportunity. Hence, the consequential impugned directions issued cannot be termed to be in violation of the Principles of Natural Justice.

7. The learned counsel also made an effort to impress this Court on the factual merits of the case before the DRP, as reflected in the impugned directions. Such an interference to the order of the DRP passed under Section 144(C)(5) of the Act on the facts of the case may not be permissible, for the following reasons.

8. The DRP is a special mechanism to provide speedy disposal, as a method of Alternative Dispute Resolution. In order to exercise powers under Article 226 of the Constitution of India, what requires to be appreciated is as to whether the assessee was extended a full and effective opportunity to put forth his objections and that, the directions issued pursuant to the objections are in conformity with the procedure contemplated under Section 144 (C). Barring these exceptions, this Court may not be justified in exercising its extraordinary jurisdiction under Article 226 of the Constitution of India.

9. When the DRP issues directions under Section 144(C)(5),

based on the objections received, the Assessing Officer is mandated to complete the assessments, in conformity with such directions of the DRP under Section 144(C)(13), within one month from the end of the month in which such directions are received. Every direction issued by the DRP would be binding on the Assessing Officer under Section 144 (10). In other words, the Assessing Officer has no other choice except to strictly carry out the directions of the DRP, in view of the language employed under Section 144 (C).

10. When such an assessment is made under Section 144 (C) (13) pursuant to the directions of the DRP, the assessee if aggrieved, has the option of preferring an appeal to the Appellate Tribunal under Section 253(1)(d) of the Act. This procedure cannot be bypassed by preferring a Writ Petition, barring the exceptions pointed out in the preceding portions of this order.

11. In Hyundai Motor India Ltd., Vs. Secretary, Income Tax Department reported in 2017 (86) Taxmann.com 284 (Mad), the Madras High Court had dealt with the scope of Section 144(C) and held as follows:

> "13. Section 144C was inserted in the Income Tax Act by Finance Act, 2009, with a view to provide speedy disposal and to create an alternate dispute resolution mechanism within the income tax department (see notes on clauses to Finance Bill, 2009). Prior to insertion of Section 144C, the assessee could file an appeal to the CIT (Appeals) challenging the assessment order. On creation of the DRP, one more option is given to the assessee to approach the DRP raising objections against the variations made by the Assessing Officer. On such objections being filed, the DRP is expected to consider the draft assessment order, objections of the assessee, evidence/records that may be furnished by the assessee, reports if any called for from the Assessing Officer/Valuation Officer/TPO and issue directions, as it thinks fit, to enable the assessing officer to complete the assessment. The directions so issued by the DRP is only after opportunity to the assessee. The directions given by the DRP are binding on the Assessing Officer. Thus, the proceedings before the DRP is not an appeal over the draft assessment order, but an alternate mechanism provided to the assessee, a corrective mechanism. With this view in mind the legislation has fixed a time frame of nine months.
> ...
> 18. Therefore, it would be too far-fetched plea

on the part of the petitioner to state that sans facts, the decision in Mobis, and other cases, (Firestone International (P) Ltd. (supra), Il Jin Electronics (supra)) should be applied and the finding with regard to the adjustment of the ALP should be set aside, is a proposition, which cannot be acceded to. The DRP while issuing directions has directed adjustment by examining the facts. This direction is required to be implemented by the Assessing Officer after which it ripens into an assessment order open to challenge in terms of the provision of the Act. This appears to be precisely the reason for terming the impugned order as a direction under Section 144C (5) of the Act and it ripens into an order on being given effect to by the Assessing Officer. Therefore, I am convinced that the decisions cited by Mr. N. Venkatraman, cannot be applied, at this juncture, as the factual position requires to be considered, which obviously cannot be done in a Writ Petition and therefore, the impugned direction issued by the DRP has to be given effect to and the third respondent has to pass an order of assessment, which can be questioned by the petitioner by filing an appeal before the Tribunal."

14. The aforesaid observations of this Court are self explanatory and thus, the Assessee would be entitled to challenge the assessment to be made pursuant to the impugned directions of the DRP and the present Writ Petition, directed under the pretext of violation of principles of natural justice cannot be sustained.

15. The learned counsel for the petitioner made an effort to rely on the decisions of this Court in Gamesa Renewable Private Ltd., Vs. Dispute Resolution Panel-2 and others [W.P.No.5499 of 2016 & etc] and P.D.R. Solutions FZC V. Dispute Resolution Panel-2, New Delhi and Others [2020 (313) CTR (Del.) 160] to canvass the grounds that the Writ Petition could be maintained. Though the Madras High Court, as well as the Delhi High Court, had entertained the Writ Petitions in the above said Writ Petitions, the observations made therein at paragraph 12 of Gamesa's case (supra) relating to violation of principles of natural justice and paragraph 14 of P.D.R. Solutions' case (supra) touching upon the fundamental error relating to the exercise of jurisdiction which are glaring and noticeable, stands out as exceptions for entertaining the Writ Petitions against the directions of the DRP and such exceptions, having been found to be unavailable to the petitioner in this case, debars them to place reliance on the same.

16. For all the foregoing reasons, I do not find any merits in the present Writ Petition and hence, the Writ Petition stands dismissed. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Dispute Resolution Panel-2,
   7th Floor, Income Tax Office,
   BMTC Building, 80 Feet Road,
   Koramnangala,
   Bangalore-580 095.

2. The Deputy Commissioner of Income-Tax (TPO) 2(1),
   5th Floor, BSNL Building, Tower-I,
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   121, Mahatma Gandhi Road,
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+1cc to M/s.Surana & Surana, Advocate, Sr.No.30145

ORDER MADE IN
W.P.No.32225 of 2016
and
WMP.No.27945 of 2016
& WMP.No.6009 of 2020

rr ii (22/10/2020)