IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.10.2020

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 1784 of 2014
and
W.M.P. Nos. 1 and 2 of 2014

M/s. Virtusa Consulting Services Private Limited,
Rep. by its Authorised Signatory,
N.M.Vaidyanathan,
No. 34, IT Highway,
Navallur,
Chennai – 600 130. .... Petitioner
(Cause-title amended by order dated 14.10.2020
in W.M.P. No. 18576 of 2020)

-vs-

1. Transfer Pricing Officer – II,
Room No.203, 2nd Floor, Main Building,
Aayakar Bhawan,
121, Mahatma Gandhi Road
Chennai-600 034.

2. Dispute Resolution Panel,
Room No.705, 7th Floor,
Aayakar Bhawan (Annexe),
121, Mahatma Gandhi Road,
Nungambakkam,
Chennai-600 034.

3. Assistant Commissioner of Income Tax,
Company Range, V(1),
121, Nungambakkamk High 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 in F.No.DRP/CHE/42/2013, dated 20.12.2013 relating to Assessment Year 2009-10 on the file of the Second Respondent, quashing the same and direct the issuance of directions in accordance with earlier dated 09.08.2012 and 12.04.2013 holding the Comparable Uncontrolled Price method to be the Most Appropriate Method for determination of the Arm's Length Price between the Petitioner and the Citi Group entities overseas.

For Petitioner : Mr. Kamal Sawhney
For Arun Karthik Mohan

For Respondents: Mrs. Hema Muralikrishnan
Senior Standing Counsel (For R1 to R3)

O R D E R
(through video conference)

Heard Mr. Kamal Sawhney, Learned Counsel for the Petitioner and Mrs. Hema Muralikrishnan, Learned Senior Standing Counsel appearing for the First to Third Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Writ Petition challenges the order in F. No. DRP/CHE/42/2013 dated 20.12.2013 passed by the Second Respondent for the assessment year 2009-10 under Section 144-C (5) read with Section 144-C(8) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act' for short) in respect of the Petitioner. It is brought to notice that by an interim order dated 24.01.2014 passed in this Writ Petition, this Court while staying the impugned order held that the Respondents were at liberty to quantify the liability for tax in furtherance to the impugned order without prejudice to the rights of both sides. The First Respondent, thereafter, made the requisite quantification by order in C.R. No.P-201/TPO-II/A.Y.2009-10 dated 07.02.2014 and based on the same, the Third Respondent proceeded to pass the assessment order under Section 143(3) read with Section 92(C)(A)(4) and Section 144-C of the Act, which was challenged by the Petitioner in W.P. No. 10182 of 2014, and this Court passed the following self-explanatory order:-

> "2. The learned counsel for the petitioner contended that though this Court granted interim stay in W.P. No. 1784 of 2014 of 2014 and M.P. No. 1 of 2014 with liberty to the respondent only to quantify the amount and not to implement the same, the respondent passed the impugned order of assessment, which is in violation of the principles of natural justice and against the order passed by the High Court in W.P. No.1784 of 2014.
>
> 3. The learned counsel for the respondent submitted that pursuant to the direction of this Court in W.P. No. 1784 of 2014 the respondents only arrived at the quantum in the form of impugned order of assessment,

> but the implementation will be done only after final disposal of the case.
>
> 4. In view of the clear statement made by the respondent, no further order is necessary in this writ petition. It is made clear that the respondent shall implement the order of assessment, which is impugned in the writ petition, only after the disposal of the writ petition in W.P. No. 1784 of 2014.
>
> The Writ Petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed."

It also relevant to mention here that in the notice of demand dated 24.02.2014 under Section 156 of the Act attached to the aforesaid assessment order passed by the Third Respondent, it has been provided as follows:-

> "5. If you intend to appeal against the assessment/fine /penalty, you may present an appeal under Part A of Chapter XX of the Income Tax Act, 1961, to the Commissioner of Income Tax (Appeals) V within thirty days of the receipt of this notice, in Form No.35, duly stamped and verified as laid down in that form.
>
> 6. The amount has become due as a result of the order of the Joint Commissioner of Income Tax / Commissioner of Income Tax (Appeals) /Chief Commissioner or Commissioner of Income Tax under section of the Income Tax Act, 1961. If you intend to appeal against the aforesaid order, you may present an appeal under Part B of Chapter XX of the said Act to the Income Tax Appellate Tribunal within sixty days of the receipt of that order, in Form No.36, duly stamped and verified as laid down in that form."

3. It is submitted by the Learned Counsel for the Petitioner that in order to have an effectual adjudication in a comprehensive manner, the Petitioner may be permitted to withdraw the Writ Petition with liberty to file statutory Appeal before the concerned authority, so that all the contentions raised this Writ Petition could be canvassed in that forum.

4. Having regard to the aforesaid submissions made, this Writ Petition is dismissed as withdrawn granting such liberty. It is made clear for the purpose of reckoning limitation for availing the aforesaid remedy, the period from the date of

filing of this Writ Petition, viz., 21.01.2014 till the date on which the certified copy of this order is made ready, shall be excluded. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

Maya

To

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Chennai-600 034.

+1cc to Mr.Arun Karthik Mohan, Advocate SR.No.34336

GP(CO)
GMY(10/11/2020)