IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.07.2020

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

T.C.A.No.380 of 2017

Accenture Solutions Pvt. Ltd.,
(Successor of Accenture Services Pvt. Ltd.)
Plant 3, Godrej & Boyce Complex,
LBS Marg, Vikroli (W)
Mumbai 400 079 ...Appellant/Appellant

vs.

The Deputy Commissioner of Income Tax,
Corporate Circle 3(2)
Chennai 600 034 ..Respondent/Respondent

Prayer ::- Appeal filed against the order of the Income Tax Appellate Tribunal, D Bench, Chennai dated 14.09.2016 in ITA No.1129/Mds/2015. Against the order of Deputy Commissioner of Income Tax, Corporate Circle 3(2), Chennai made in PAN.No.AABCG3742P dated 20.02.2015 for the Assessment year 2010-2011 and against the Joint Commissioner of Income Tax Transfer pricing officer-III Chennai dated 31/12/2013 in F.No.Z-301/TPO-III/AY 2010-2011 Assessment year 2010-2011.

For appellant : Mr.Nishat Thakkar
for Mr.R.Venkatnarayanan
for M/s.Subbaraaiyar Padmanabhan

For respondent : Mr.M.Swaminathan,
Ms.Pushpa

ORDER
(Made by DR.VINEET KOTHARI, J.)

The Court was held by Video Conference, as per the Resolution of the Full Court dated 3 July 2020, by Judges at their respective residence and the counsel, staff of the Court appearing from their respective residences.

2. Heard Mr.Nishat Thakkar, learned counsel for the appellant and Mr.Swaminathan, learned counsel for the Department.

3. The only grievance made before us in the present appeal filed by the Assessee is that the learned Tribunal by its order dated 14 September 2016 has erred in rejecting the appeal filed by the Assessee on the technical ground that the memo of appeal was filed in the name of the company M/s.Zenta Knowledge Services Private Limited which lost its identity after its merger with M/s.Accenture Services Pvt. Ltd. with effect from 1 April 2012 under a scheme duly sanctioned by the High Court under the provisions of the Companies Act. It is also brought to our notice that M/s.Accenture Service Pvt. Ltd. has subsequently merged with M/s.Accenture Solutions Pvt. Ltd., the present appellant before us.

4. The operative part of the order of the learned Tribunal in paragraph nos. 3 and 4 are quoted below for ready reference.

> "3. We heard Smt. Jayanthi Krishnan, the learned department representative also. When the assessee claims that M/s.Zenta Knowledge Services Private Limited was not in existence on the date of the order passed by the AO,TPO and DRP,it is not known how the assessee could file an appeal in the name of the non-existent company. This Tribunal is of the considered opinion that the order passed by the AO against the non-existent company on the date of the order cannot stand in the eye of law. Similarly an appeal filed by the non-existent company also cannot tie treated as a valid appeal. Moreover, the application said to be filed by the assessee to substitute the amalgamating company namely M/s.Accenture Services Pvt. Ltd. cannot be entertained at this stage. In other words, when an appeal is filed in the name of a non-existent company, there cannot be any substitution during the pendency of the proceedings. In other words, the appellate proceedings initiated by a nonexistent company before this Tribunal cannot survive at all. Therefore, there is no question of substitution of any existent company in the place of a non-existent company.

4. In view of the above, both the appeals filed by the assessee as well as by the department are dismissed and also cross objection filed by the assessee is dismissed.

5. The learned counsel for the department, Mr.M.Swaminathan, submitted that the appeal filed by the Department also deserves to be heard by the Tribunal on merits, in case the matter is remanded to the Tribunal for deciding the appeal on merits.

6. On perusal of records, we noticed that by virtue of scheme of amalgamation filed before the High Court, M/s. Zenta Knowledge Services Private Limited merged with M/s.Accenture Services Private Limited. By virtue of the said merger, all the existing and the future litigation of the transferor company will be transferred and continued in the name of transferee company viz., M/s.Accenture Services Private Limited with effect from 1st April 2012. It has also brought to our knowledge that this M/s. Accenture Services Private Limited has subsequently merged with the M/s. Accenture Solutions Private Limited. By virtue of this merger, all the litigations pursued against or by both M/s. Zenta Knowledge Services Private Limited and M/s.Accenture Services Private Limited shall automatically be transferred and will be continued in the name of transferee company viz., M/s. Accenture Solutions Private Limited. When such being the position, without considering the order of the High Court in the matter of amalgamation and the automatic transfer of litigations of transferor companies into transferee company, the Tribunal has simply rejected the appeal, on the ground that the appeal was filed in the name of non-existing person. We do not agree with the said finding of the Tribunal as the same is not legally sustainable.

7.Therefore, we are inclined to set aside the order of the Tribunal dated 14 September 2016, with request to the Tribunal to decide the appeals of the assessee (M/s.Accenture Solutions Pvt. Ltd.,) and the Revenue and the cross appeal of the assessee, on merits and in accordance with law. The contentions of the parties are left open before the Tribunal and once the appeals are decided by the Tribunal on merits, both the parties will be free to raise their substantial questions of law again under Section 260A of the Act, if consider appropriate.

8. With these observations, the present appeal is disposed of. No costs.

Sd/-
Assistant Registrar

//True Copy//
Sub Assistant Registrar

kpl/tar

To
1.The Income Tax Appellate Tribunal, D Bench, Chennai.

2.The Deputy Commissioner of Income Tax,
Company Circle-III(3)2 Chennai

3.The Joint Commissioner of Income Tax
Transfer pricing officer-III Chennai

+1 cc to M/s.Subbaraya Aiyar Advocate sr25672

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