IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.08.2020

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. Nos.34618, 34626, 34630, 34644, 34656,
34660, 34665 & 34668 of 2019
And
WMP. Nos.35374, 35379, 35383, 35384, 35385,
35386, 35396, 35398, 35409, 35410, 35413,
35416, 35419, 35420, 35423 & 35425 of 2019

W.P. No.34618 of 2019

M/S.COASTAL ENERGY PVT LTD,
Rep by its Director Mr. Ahmed A.R.BUHARI,
No.4,Buhari Towers,
Moores Road, Egmore,
Chennai-6. .. Petitioner in all WPs

Vs.

1. Additional Joint Commissioner of Income Tax,
O/O ADDL/JCIT Transfer Pricing Officer-I,
Room No 502, 5th Floor,Tower-,
BSNL building 16, Greams Road,
Chenani-600 006.

2. Assistant Commissioner of Income tax,
Central circle-1(1),
121 Mahatma Gandhi Road,
Nungambakkam, Chennai-34. .. Respondents in al WPs

Prayer in WP No.34618 of 2019: Writ Petition filed under Article 226 of the Constitution of India praying Certiorari to call for the records on the file of First Respondent in passing the Impugned order No ITBA/TPO/F/92CA3/2019-20/1019690595(1) for the Assessment year 2010-11 under Section 92 CA(3) of the Income tax- act 1961 dated 1.11.2019 quash the same as illegal arbitrary and devoid of merit.

Prayer in WP No.34626 of 2019 : Writ Petition filed under Article 226 of the Constitution of India praying Certiorari to call for the records on the file of First Respondent in passng the Impugned order No ITBA/TPO/F/92CA3/2019-20/1019690595(1) FOR THE Assessment year 2011-12 under Section 92 CA(3) of the Income tax- act 1961 dated 1.11.2019 quash the same as illegal arbitrary and devoid of merit.

Prayer in WP No.34630 of 2019 : Writ Petition filed under Article 226 of the Constitution of India praying Certiorari to call for the records on the file of First Respondent in passng the Impugned order No ITBA/TPO/F/92CA3/2019-20/1019690049(1) FOR THE Assessment year 2012-13 under Section 92 CA(3) of the Income tax- act 1961 dated 1.11.2019 quash the same as illegal arbitrary and devoid of merit.

Prayer in WP No.34644 of 2019 : Writ Petition filed under Article 226 of the Constitution of India praying Certiorari to call for the records on the file of the First respondent in passing the impuged order No ITBA/TPO/F/92CA3/2019-20/1019690314(1) for the Assessment year 2013-14 under section 92 CA(3) of the Income tax act 1961 dated 1.11.2019 quash the same as illegal arbitrary and devoid of merit.

Prayer in WP No.34656 of 2019 : Writ Petition filed under Article 226 of the Constitution of India praying Certiorari to call for the records on the file of First Respondent in passng the Impugned order No ITBA/TPO/F/92CA3/2019-20/1019691292(1) FOR THE Assessment year 2014-15 under Section 92 CA(3) of the Income tax- act 1961 dated 1.11.2019 quash the same as illegal arbitrary and devoid of merit.

Prayer in WP No.34660 of 2019 : Writ Petition filed under Article 226 of the Constitution of India praying Certiorari to call for the records on the file of First Respondent in passng the Impugned order No ITBA/TPO/F/92CA3/2019-20/1019691186(1) FOR THE Assessment year 2015-16 under Section 92 CA(3) of the Income tax- act 1961 dated 1.11.2019 quash the same as illegal arbitrary and devoid of merit.

Prayer in WP No.34665 of 2019 : Writ Petition filed under Article 226 of the Constitution of India praying Certiorari to call for the records on the file of First Respondent in passng the Impugned order No ITBA/TPO/F/92CA3/2019-20/10196/90912(1) FOR THE Assessment year 2016-17 under Section 92 CA(3) of the Income tax- act 1961 dated 1.11.2019 quash the same as illegal arbitrary and devoid of merit.

Prayer in WP No.34668 of 2019 : Writ Petition filed under Article 226 of the Constitution of India praying Certiorari to call for the records on the file of First Respondent in passng the Impugned order No ITBA/TPO/F/92CA3/2019-20/10196/92142(1) FOR THE Assessment year 2017-18 under Section 92 CA(3) of the Income tax- act 1961 dated 1.11.2019 quash the same as illegal arbitrary and devoid of merit.

For Petitioner : Mr.R.Sivaraman

For Respondents : Mr.A.P.Srinivas
Senior Standing Counsel

C O M M O N   O R D E R

These Writ Petitions challenge orders dated 01.11.2019 passed by R1/Transfer Pricing Officer (TPO) under the provisions of Section 92 CA(3) of the Income Tax Act 1961 (in short 'Act') in respect of Assessment Years (A.Y.) 2010-11 to 2017-18.

2. The petitioner was in receipt of notices under Section 148 of the Act alleging escapement of income. While proceedings for re-assessment were on-going, the petitioner approached the Settlement Commission on 12.12.2018, which application was rejected by order passed under Section 245D(1) dated 19.12.2018. A second application was filed on 14.02.2019, which was also rejected at the stage of admission by order dated 21.02.2019. A third application filed on 16.04.2019 was treated as defective and rejected by order dated 25.04.2019. Pursuant to the third rejection, a show cause notice dated 20.11.2019 was issued reviving the proceedings for assessment in terms of Section 245HA of the Act.

3. In the meantime, a reference was made to the TPO for determination of Arms Length Price (ALP) of international transactions with associated entities. The TPO passed orders dated 01.11.2019, impugned in these Writ Petitions.

4. At the outset, the affidavit filed in support of these Writ Petitions is incomplete and bereft of the above narration of events. It was left for the Court to glean this information from the order of assessment dated 26.02.2020 passed by the Assessing Officer in the course of hearing of these Writ Petitions.

5. Though the impugned orders have been challenged on several grounds, including the bar of limitation, before me the petitioner specifically restricts its challenge to the aspect of violation of principles of natural justice only, giving up all other grounds raised.

6. The following dates are relevant to decide this issue. The first notice issued by the TPO is dated 26.08.2019, in response to which details were submitted on 12.09.2019. A show cause notice was issued thereafter on 29.10.2019 and reply thereto on 31.10.2019. The order of the TPO has been passed on 01.11.2019 within a day of the reply having been filed. Clearly, there has been no effective opportunity extended to the petitioner to respond to the show cause notice and neither has there been any time for the TPO to have applied his mind to the response of the petitioner. Having received the preliminary details under cover of reply dated

12.09.2019, the show cause notice has been issued only on 29.10.2019, nearly six (6) weeks thereafter.

7. The impugned orders are thus set aside on the ground of violation of principles of natural justice. Proceedings shall be initiated de novo by R1 within a period of four (4) weeks from date of uploading of a copy of this order and once initiated, the petitioner shall be heard either over video conference or by way of physical hearing, as may be mutually convenient to the parties and proceedings shall be completed within eight (8) weeks of date of first hearing.

8. Pursuant to the third rejection by the Settlement Commission and the revival of proceedings for assessment, the Assessing Authority has passed an order of assessment dated 26.02.2020 incorporating the order passed by the TPO dated 01.11.2019 impugned in these Writ Petitions. By virtue of the setting aside of the impugned order now and the direction to the TPO to redo the transfer pricing component of the assessment alone, only the portion relating to the adjustment to ALP at paragraph 6 of order dated 26.02.2020 will stand substituted by the order to be passed by the TPO now and an order (consolidated order of assessment) incorporating the same shall be passed by the Assistant Commissioner of Income Tax /R2 upon receipt thereof from the TPO and communicated to the assessee. Limitation in regard to any challenge to the determination of ALP will run from date of service of the consolidated order of assessment upon the assessee.

9. These Writ Petitions are disposed in the above terms. No costs. Connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

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To

1. Additional Joint Commissioner of Income Tax,
O/O ADDL/JCIT Transfer Pricing Officer-I,
Room No 502, 5th Floor,Tower-,
BSNL building 16, Greams Road,
Chenani-6.

2. Assistant Commissioner of Income Tax,
Central circle-1(1),
121 Mahatma Gandhi Road,
Nungambakkam, Chennai-34.

+1cc to Mr.AP.Srinivas, Advocate SR.No.28170

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And
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NRL(CO)

GMY(23/09/2020)