IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1439 OF 2021

Directi Services Pvt Ltd. ….Petitioner

V/s.

The Assistant Commissioner of Income Tax, International Tax, Circle-2(1)(2) Mumbai …Respondent

----

Mr. Jehangir D. Mistri, Senior Advocate i/b Mr. Atul K. Jasani for Petitioner
Ms Shehnaz V. Bharucha for Respondent

CORAM : K.R. SHRIRAM &
AMIT B. BORKAR, JJ
DATED : 25th OCTOBER 2021

P.C. :

1 Petitioner is impugning an order dated 30th March 2021 passed under Section 201(1) and 201(1A) of the Income Tax Act, 1961 (the said Act) for A.Y.-2016-2017 on various grounds including that the order is contrary to the principles of natural justice, beyond period of limitation, it is arbitrary and unreasonable etc.

2 Petitioner is wholly owned subsidiary of one Endurance International Group (India) pvt Ltd. which in turn is a subsidiary of Endurance Singapore Holdings 2 Pte Ltd. Petitioner carries on business as a collection agent in respect of monies receivable from Indian customers by its Associated Enterprise – PDR Solutions FZC, UAE registered entity.

3 Respondent No.1 who is also the TDS Officer of Petitioner passed the impugned order dated 30th March 2021 holding petitioner to be an assessee-in-default for deduction of tax under the provisions of the Act, on payments

made by petitioner to PDR Solutions. We do not have to go into further details which petitioner has narrated in the petition but can fast forward straight to notice dated 11th February 2021 issued by respondents to petitioner under Section 133(6) of the Act, verification of details furnished in form No.15CA in view of non deduction / lower deduction of tax at source . This is followed by notices dated 18th February 2021, 4th March 2021, 9th March 2021 and 16th March 2021 under Section 201 of the Act. Petitioner replied to these show cause notices by its letters dated 22nd February 2021, 10th March 2021, 18th March 2021 and a comprehensive reply dated 26th March 2021.

4 Respondent no.1 passed order dated 30th March 2021 under Section 201(1) and 201(1A) read with Section 195 of the Act holding petitioner liable to pay a sum of Rs.5,24,92,294/- under Section 201(1) of the Act and sum of Rs.3,24,47,398/- under Section 201(1A) of the Act and made a total demand of Rs.8,45,12,593/-. The notice of demand under Section 156 for Rs.8,49,39,692/- was also made on account of default in not deducting the tax as shown under Section 195 of the Act on the sums credited.

5 In the impugned order, respondents have referred to the five notices issued namely; notice dated 11th February 2021, 18th February 2021, 4th Mrach 2021, 9th March 2021 and 16th March 2021. There is also reference in the impugned order to reply dated 22nd February 2021 and 18th March 2021. The impugned order, however, is totally silent about the reply dated 10th March 2021 and the comprehensive reply dated 26th March 2021. Not

only respondent no.1 has failed to deal with these replies in the impugned order there is not even a reference to the said replies. Moreover, in the impugned order, respondent no.1 states that petitioner is not an independent person and its activities are devoted wholly on behalf of PDR and thus a dependent agent within the meaning of Article 5(4) of the DTAA between India and UAE. In the show cause notice issued, petitioner has not been called upon to show cause as to why petitioner should not be held as the dependent agent within the meaning of Article 5(4) of Indo-UAE DTAA.

6 Ms Bharucha submitted that the agreement between PDR Solutions UAE and petitioner are both signed by the same person and, therefore, are one and the same and both are related and Associated Enterprises. Ms Bharucha submitted that the role of petitioner is not only restricted to collection and payment but it is a group company floated by Singapore based company and solely dedicated for the work assigned by the PDR solutions. In our view, these are going into the merits of the matters but does not answer the moot point as to why all the replies given by petitioner to show cause notices issued have not been considered and dealt with in the impugned order. Ms Bharucha also referred to the affidavit in reply and submitted that petitioner was dependent PE for PDR Solutions UAE and thus there was dependent PE in India and remittance of tax in India as business income. To a query posed by the court, Ms Bharucha in fairness stated that the show cause notice does not refer to this issue and petitioner has not been called upon to show cause why it should not be held that petitioner

was dependent PE for PDR Solutions UAE etc.

7 Issuance of a show cause notice is the preliminary step which is required to be undertaken. The purpose of show cause notice is to enable a party to effectively deal with the case made out by respondents (***Om Shri Jigar Association Vs Union of India***[1])

8 In the circumstances, without making any observations on the merits of the case, we are quashing the impugned order dated 30th March 2021 and any consequential demand notice issued therein and remand the matter to respondent no.1 to pass fresh orders after hearing petitioner. If respondent no.1 feels need to add any further points in the show cause notice, respondent no.1 shall issue fresh show cause notice to petitioner and petitioner may respond to the said show cause notice. We keep open all rights and contentions of the parties including petitioner's right to raise the issue of limitation.

8 Since we have quashed the impugned order, Mr. Mistry undertakes to withdraw the appeal filed by petitioner within two weeks from today. Statement accepted.

(AMIT B. BORKAR, J) **(K.R. SHRIRAM, J.)**

1 1994 SCC Online Guj. 77