IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.1575 of 2020
and
WMP. Nos.1839, 1841 and 1842 of 2020

GE Oil & Gas India Private Ltd
SF No.608 Chettipalayam Road,
Eachanari Post, Coimbatore - 641 021
Tamil Nadu
Represented by its Authorised Signatory
Mr.Ranveer Singh Rana .. Petitioner

Vs.

Assistant Commissioner of Income Tax
CORP Circle 1, CBE,
Main Building, 63, Race Course Road,
Coimbatore - 641 018, Tamil Nadu. .. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Certiorari to call for the records of the Assessment Order bearing no.ITBA/AST/S/143 (3)/2019-2020/1023029029(1) and dated 24.12.2019 ('Impugned Order') passed by the Respondent under section 143(3) of the Income Tax Act, 1961 ('the Act') for Assesment Year 2016-17 ('Assessment Year') and quash the same.

For Petitioner : Mr.Sechit Jolly for
Mr.Karthik Sundaram

For Respondent : Mr.A.P.Srinivas,
Senior Standing Counsel

O R D E R

The petitioner challenges order dated 24.12.2019 relating to Assessment Year (AY) 2016-17 passed in terms of the provisions of the Income Tax Act, 1961 (in short 'Act'). The primary ground agitated is that the assessment involves issues of Transfer Pricing and thus the Assessing Officer ought to have passed an order of draft assessment in terms of Section 144C of the Act and not an order of regular assessment quantifying the final demand and imposing penalty.

2. At paragraph nos. 6 to 8 of the counter filed by the respondent, the Officer concedes to the position that what ought to have been passed in the circumstances is a draft and not final assessment order. The counter states as follows:

> '6. I submit that in reply to para 8, While assessing the total income of the assessee, the AO made additions on various issues, one of the issue being adjustment on transfer pricing During the course of assessment proceedings in u/s.143(3) of the Act, while uploading the draft order, the assessing officer inadvertently choose assessment order instead of draft assessment order u/s.144C(1) of the Act in the Income Tax Department software (ITBA), consequently the Demand Notice was automatically issued by the 'system'. This being a mere technical lapse, assessee could have approached the assessing officer or the appellate authority for recourse, Instead the assessee filed writ before the Hon'ble High Court.
>
> 7. I submit that in reply to para 9, Even though Sec.144C(1) mandates assessing officer to issue draft assessment order before issuing final assessment order in cases where Transfer Pricing issue involves, the assessee does not lose its right or opportunity to approach the appellate authority.
>
> 8. I submit that in reply to para 10, The assessee without approaching the assessing officer or the appellate authority, directly went for writ before the Hon'ble High Court. Had the assessee approached the assessing officer, the AO could have issued a corrigendum on the order.'

3. The Officer raises the question of maintainability on the ground that a statutory remedy is available before the Assessing Officer for rectification of mistake. The error committed is not a technical lapse as sought to be explained away, but one that is substantive. It is an admitted position that the assessment of this petitioner involves issues of transfer pricing and an order has been passed by the Transfer Pricing Officer determining the arms length price.

4. The scheme of assessment in terms of Section 144C statutorily requires the officer to pass a draft assessment order at the first instance and put the same to the assessee for its acceptance or for filing of objections before the Dispute

Resolution Panel. The language of Section 144 C makes this position more than abundantly clear.

5. I draw support in this regard from a decision of this Court in Vijay Television V. Dispute Resolution Panel (369 ITR 113), confirmed by the Division Bench in 407 ITR 642 that reiterates the settled proposition that Section 144C sets forth a mandatory scheme of assessment and it is incumbent upon the Assessing Officer to pass an order of draft assessment at the first instance before proceeding to finalise the assessment in line with the procedure set out under Section 144C.

6. Moreover, to say that the impugned order has been passed 'inadvertently' by choosing of the wrong field in the Income Tax Department software would not just be an over-simplification, but a wrong statement since a perusal of the order of assessment reveals that the assessment has been styled consciously, as an order of regular assessment only. To begin with, the Section under which the assessment was made is stated to be 'Section 143 (3)'. The heading in the order is 'assessment order'. At paragraph 5, the officer states as follows:

> 5. The assessment is completed as above, as per the downward adjustment determined by the TPO and the total income of the assessee is computed as under

Returned income	Rs.86,51,22,440
Add: Downward adjustment as per TPO's order in Para "8"	Rs.10,27,06,154
Add: Disallowance u/s.37 (as per para 3)	Rs. 1,08,16,843
Add: Disallowance u/s.37 (as per para 4)	Rs 26,16,846
Total Income assessed	Rs.98,12,62,283

> Penalty proceedings u/s.271(1) (c) of the Act is initiated separately for furnishing inaccurate particulars of income.

The total income has been assessed and the order accompanied by a computation sheet determining the demand payable by the petitioner along with interest. Penalty proceedings have been initiated in terms of Section 274(1)(c) of the Act. Thus, it is clear that the Officer has consciously proceeded to pass an order of regular assessment, losing sight of the scheme of assessment in terms of Section 144C, which he is statutorily mandated to follow and apply.

7. In Principal Commissioner of Income Tax V. Headstrong Services India Private Limited (I.T.A.No.77 of 2019 dated 24.12.2020), the challenge was to an assessment made on remand from an appellate authority and the issue that arose was whether the assessing authority would have to pass a draft order of assessment or a final order of assessment. The phrase 'in the first instance' in Section 144C was interpreted by the Division Bench to the effect that, be an original order of assessment or an assessment made on remand, the mandate of Section 144C must be followed.

8. A draft order of assessment would normally indicate, in conclusion, that the assessee has the option of either acquiescing with the proposed assessment or proceeding to file objections to the same within 30 days. This statement is conspicuously absent in the present order.

9. In the light of the discussion as aforesaid, I have no hesitation in quashing the impugned order and consequential demand. The Writ Petition is allowed. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

Assistant Commissioner of Income Tax
CORP Circle 1, CBE,
Main Building, 63, Race Course Road,
Coimbatore - 641 018, Tamil Nadu.

+1cc to Mr.A.P.Srinivas, Advocate, S.R.No. 274

+1cc to Mr.Karthik Sundaram, Advocate, S.R.No. 295

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RSI(CO)

GN(05/02/2021)