IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.08.2021

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.18574 of 2016
and
W.M.P.No.16280 of 2016

M/s.Dorma India Private Limited,
Rep.by its Director and Chief Financial Officer,
Mr.N.Krishnan,
S/o.Mr.Narayanan,
14/1, Pattulos Road,
Chennai – 600 002. ...Petitioner

Vs

1. Deputy Commissioner of Income Tax,
   Transfer Pricing Officer-1(2)
   Room No.319, 3rd Floor, Main Building,
   No.121, Mahatma Gandhi Road,
   Nungambakkam, Chennai – 600 034.

2. The Joint Commissioner of Income Tax (OSD)
   Corporate Circle -1(1), Aayakar Bhavan,
   Room No.611, Wanaparthy Block,
   6th Floor, 121, Mahatma Gandhi Road,
   Nungambakkam, Chennai – 600 034. ...Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India to issue of Writ of Certiorari, calling for the records in PAN No.AAACD3980D/DC-Co.C-1(1) dated 06.04.2016 on the file of the 2nd respondent relating to Assessment Years 2006-07, 2007-2008 and 2008-09, quash the same.

For Petitioner : Mr.N.V.Balaji

For Respondents : M/s.Hema Muralikrishnan
Senior Standing counsel
[For Income Tax]

O R D E R

The notice dated 06.04.2016 issued by the second respondent relating to the Assessment Years 2006-07, 2007-08 and 2008-09 is under challenge in the present writ petition.

2. The impugned notice states that, in connection with the relevant Assessment Years stated above, the petitioner/assessee was requested to appear before the Joint Commissioner of Income Tax either in person or through authorized representative along with the documents related to the issues as adjudicated by the Hon'ble Income Tax Appellate Tribunal [in short 'ITAT'], Chennai on 19.04.2016 at about 11.30 a.m. Admittedly, the petitioner submitted their detailed objections for the relevant Assessment Years on 27.04.2016. Simultaneously, the writ petition is also filed.

3. The learned counsel appearing on behalf of the writ petitioner made a submission that the notice impugned was issued beyond the period of limitation as contemplated under Section 153(2A) 4^{th} Proviso.

4. Relying on the said provisions, the learned counsel for the petitioner reiterated that the last date in the present case was 31.03.2014 and 31.03.2016 and the impugned notice was issued on 06.04.2016 beyond the period of limitation and therefore, on the ground of jurisdiction, the notice is liable to be set aside.

5. The learned Senior Standing counsel opposed the said contentions by stating that the petitioner / assessee has submitted a detailed objections including the point of limitation and the said ground is to be adjudicated on merits and in accordance with law. Therefore, the petitioner has to wait for final orders to be passed. Further, the present writ petition is filed, challenging the notice and thus the writ petition is to be rejected.

6. This Court is of the considered opinion that the petitioner has relied on Section 153(2A) 4^{th} Proviso and contended that the impugned notice was issued beyond the period of limitation as contemplated. However, the ground requires an adjudication as verification of original records are essential for reckoning the period of limitation.

7. The learned Senior Standing Counsel states that the period of limitation is to be decided based on the records and therefore, the petitioner has to establish the same before the competent authority. In fact, the details regarding the proceedings are to be considered for the purpose of reckoning the period of limitation and for the said purpose, an adjudication by the competent authority is necessary.

8. This being the factum, the respondents are bound to decide the grounds raised regarding the limitation as a preliminary issue and thereafter, proceed further, if the impugned notice was issued within the period of limitation. If

the notice was issued beyond the period of limitation, then all further proceedings are to be dropped. Under these circumstances, the limitation point is to be decided at the first instance. Accordingly, the respondents are directed to consider the objections filed by the writ petitioner on 27.04.2016 and decide the ground of limitation as raised by the writ petitioner, within the period of eight weeks and pass final orders on merits and in accordance with law, by affording opportunity to the writ petitioner and thereafter, all further proceedings, if necessary, may be continued.

9. With these observations, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To

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2. The Joint Commissioner of Income Tax (OSD)
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   6th Floor, 121, Mahatma Gandhi Road,
   Nungambakkam, Chennai – 600 034.

+1cc to M/s.Hema Muralikrishnan, Advocate, S.R.No.39165
+1cc to Mr.N.V.Balaji, Advocate, S.R.No.39045

W.P.No.18574 of 2016

PMK(CO)
RGA(31/08/2021)