IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.09.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. No. 2025 of 2016
and
W.M.P. No. 1766 of 2016

M/s. Congnizant Technology Solutions India P.Ltd.
Sixth Floor, New No. 165, Old No. 110
Menon Eternity Building
St. Mary's Road
Chennai – 600 018
Represented by its Director ... Petitioner

Vs.

1. The Assistant Commissioner of Income Tax
   Large Taxpayer Unit
   1775, Jawaharlal Nehru Inner Ring Road
   Anna Nagar Western Extension
   Chennai – 600 101.

2. The Deputy Commissioner of Income Tax
   Large Taxpayer Unit
   1775, Jawaharlal Nehru Inner Ring Road
   Anna Nagar Western Extension
   Chennai – 600 101.

3. The Commissioner of Income Tax
   Large Taxpayer Unit
   1775, Jawaharlal Nehru Inner Ring Road
   Anna Nagar Western Extension
   Chennai – 600 101. ... Respondents

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for the records of the First Respondent pertaining to the reopening notice dated 26.03.2015 for assessment year 2008-2009 and the consequential communication dated 02.11.2015.

For Petitioner : Mr. Srinath Sridevan

For Respondents : Mr. A.P.Srinivas
Senior Standing Counsel (For Income Tax)

O R D E R

The Writ on hand is instituted questioning the validity of the reopening proceedings dated 26.03.2015 initiated under Sections 147 and 148 of the Income Tax Act [hereinafter referred to as 'the Act' for short], and consequential proceedings dated 02.11.2015 disposing of the objections raised by the Petitioner /Assessee.

2. The Petitioner is a private limited company, incorporated under the Companies Act, 1956 and engaged in the business of development of computer software and related services and it provides /exports various software solutions to variety of industries. The Assessee-Company carries out its business activities through various units set up in Software Technology Parks (STPs) and Special Economic Zones (SEZs), and claims deductions under Sections 10A and 10AA of the Act. The Assessee-Company filed its return of income on 30.09.2008 for the Assessment Year 2008-09. The return of income was processed under Section 143(1) of the Act on 08.03.2010.

3. The case of the Assessee-Company was selected for scrutiny by the Assistant Commissioner of Income Tax under Section 143(2) of the Act on 12.08.2009 and details were called for by the Respondents, and in that regard, the Assessee-Company submitted explanations, materials and relevant documents. Thereafter, the matter was referred to the Transfer Pricing Officer for necessary verification under Section 92CA of the Act, as the Assessee /Company has international transactions with its group companies abroad. The Transfer Pricing Officer vide its proceedings dated 11.10.2021 accepted the arm's length price of the transactions of the Assessee-Company with that of its group companies abroad.

4. The Learned Counsel for the Petitioner referred the informations and details provided by the Assessee-Company in its return of income, and elaborated that there was no suppression of material facts of the Assessee-Company. The facts, informations, Books of Accounts in all respects were submitted truly and fully, and queries raised by the Assessing Officer were also answered, and having satisfied with the materials provided by the Assessee-Company, the assessment order dated 30.12.2011 was passed under Section 143 (3) of the Act. The point of disallowance of provisions made on contingent liabilities and depreciation claim on computer software were considered by the Assessing Officer. Under these circumstances, Rectification proceedings dated 22.08.2013 were issued under Section 154 of the Act, wherein mistakes apparent from record were noticed and the Assessee-Company was asked to submit its reply. The Assessee-Company also elaborately submitted their explanations on the alleged mistakes raised by the Respondents

vide proceedings dated 22.08.2013 issued under the Act. However, no decision was taken on the said proceedings and thus, it is to be construed as it has been impliedly dropped by the department.

5. With this backdrop, the reopening proceedings are initiated under Section 147 of the Act and the impugned notice under Section 148 of the Act was issued on 26.03.2015 and the Assessee-Company vide letter dated 27.04.2015 requested the First Respondent to furnish reasons for reopen. Subsequently, the reasons are communicated to the Assessee-Company vide its proceedings dated 17.07.2015 and the Assessee-Company submitted its detailed objections on the re-opening of assessment on 18.08.2015. The contentions of the Assessee-Company is that the objections submitted were not considered and the impugned order of disposal was issued in a routine and mechanical manner, without taking note of the objections in detail.

6. The Learned Counsel for the Assessee-Company reiterated that the rectification proceedings dated 22.08.2013 initiated under Section 154 of the Act were not continued. The reasons stated in the rectification proceedings and reasons stated for re-opening of assessment are similar or one and the same. Thus, the re-opening proceedings are liable to be set aside.

7. In support of the said contentions, Learned Counsel for the Petitioner company relied on the judgment in Commissioner of Income-tax -vs- Computer Age Management Services (P.) Ltd reported in [2019] 109 taxmann.com 134 (Madras). In the said case, before the Hon'ble Division Bench of this Court, the Revenue raised similar contentions that what were acquired by the Assessee-Company were only licenses, which were intangible. However, the Assessing Officer held that they would fall under Part B of New Appendix I that the Assessee was entitled to depreciation at 25%. In the present case also, the very same arguments are advanced on behalf of the Revenue. In this regard, the Hon'ble Division Bench of this Court held in paragraph Nos. 7, 8 and 10 are as follows :-

> "7. As noticed above, the assessee is in the business of registrar and transfer agent as licensed by the SEBI handling large volume of market sensitive data and information, which is available only through general customized application software. The assessee acquired software licenses capitalized during the relevant years in the books of accounts and claimed depreciation at 60%. In paragraph 20 of the order passed by the Tribunal, the nature of items, on which, the assessee claimed depreciation at 60% has been listed out and they are 17 in number, from which, we find that substantial amount of server licenses, which

have been obtained by the assessee are customized and some of which are single user licenses.

8. The question would be as to whether the software application, which was acquired by the assessee would fall under Entry 5 of Part A of New Appendix I, which states that computers including computer software are entitled to depreciation at 60%. Note 7 of the Appendix defines the expression 'computer software' to mean any programs recorded on CD or disc, tape, perforated media or other information storage devices.

10. We find that Part B of New Appendix I is a general entry whereas Entry 5 of Part A of New Appendix I is a specific entry read with Note 7. In the instant case, the Tribunal, in our considered view, rightly held that the assessee is eligible to claim depreciation at 60%."

8. It is further contended that in the Assessee's own case in I.T.A. No. 1921/Mds/2010 the Hon'ble Income Tax Appellate Tribunal, Chennai Bench considered the similar issue. The said judgment, which is binding on the department, was not taken into consideration, while disposing of the objections raised by the Assessee-Company. As far as Para 2.2.5 of the Objections dated 18.08.2015 raised is concerned, the Assessee-Company has contended that the Income Tax Appellant Tribunal has decided the issue relating to depreciation on 'computer software' to 25 percent, as against the rate of 60 percent claimed by the Assessee-Company. However, the said issue was not considered. Thus, the orders impugned are untenable.

9. The Learned Senior Standing Counsel appearing on behalf of the Revenue objected the contentions raised on behalf of the Assessee-Company, by stating that once the Assessing Officer has reasons to believe and could able to trace out materials from and out of the Books of Accounts and the informations provided by the Assessee-Company, then there is no bar for re-opening of assessment under Section 147 of the Act. The wider scope of re-opening of assessment under Sections 147 and 148 of the Act was considered by the Hon'ble Supreme Court of India in the case of A.L.A.Firm -vs- Commissioner of Income-tax reported in [[1995] 55 Taxman 497(SC)].

10. The Learned Senior Standing Counsel appearing on behalf of the Revenue, relying on the four principles formulated by the Three Judges Bench of the Hon'ble Supreme Court of India, contended that the case of the Assessee-Company is falling under the principles laid down and there cannot be any adjudication on merits at this point of time in this Writ Petition. If at all the Assessee-Company could able to establish their case through documents and judgments, the same is to be done before the Assessing Officer and the present Writ Petition is filed

challenging the re-opening proceedings, which is akin to that of the show cause notice and in the event of allowing the Writ Petition, the Revenue is deprived of adjudicating the case of the Assessee-Company on merits, facts and circumstances and other technicalities involved, with reference to the issues raised. Therefore, it is for the Assessee-Company to participate in the re-opening proceedings to establish their case.

11. Prima facie, the issue relating to 'software key' was raised as a reason for re-opening of assessment. The said issue was not taken into consideration by the Assessing Officer, while passing the Assessment Order issued under Section 143 (3) of the Act. Thus, there is no impediment for reopening of assessment, which would not confer any right on the Assessee-Company to claim complete relaxation. It is the opportunity for the Revenue to adjudicate the omitted issues and the issues, which were not considered by the Assessing Officer at the first instance.

12. This Court is of the considered opinion that the scope of re-opening of the assessment is wider enough to cover numerous circumstances. If the Assessing Officer has reason to believe that the income chargeable to tax has escaped assessment, notice under Section 148 of the Act could be issued. Admittedly, in the case on hand the reopening proceedings are initiated beyond the period of four years but within the period of six years and the conditions as stipulated in the proviso clause to be complied with.

13. In the present case, the Assessee-Company states that they have not suppressed any material facts and they have disclosed all the facts truly and fully, and the Assessing Officer has not recorded that the petitioner has suppressed certain material facts. Thus, the case of the Assessee-Company cannot be treated as that of a case where re-opening of assessment is made within a period of four years.

14. The reasons furnished for re-opening of assessment in proceedings dated 17.07.2015 reveal that two issues are relied upon for the purpose of re-opening, one relatable to software key and another relatable to lease equalization charges under Section 115 JB of the Act.

15. Admittedly, the second issue was raised as a reason for rectification in the proceedings initiated under Section 154 of the Act. Further, the issue relatable to software key was the first reason for re-opening of assessment under Section 147 of the Act.

16. With reference to the issue relatable to software key, the Learned Counsel for the Assessee-Company mainly relied upon two judgments as follows:-

1. Assessee-Company's own case in I.T.A. No. 1921/Mds/2010 passed by the Income Tax Appellate Tribunal and
2. Commissioner of Income-tax -vs- Computer Age Management Services (P.) Ltd reported in [2019] 109 taxmann.com 134 (Madras),

wherein a similar point was considered. However, the Assesssing Officer, while disposing the objections, has not considered the issue relatable to software key, with reference to the principles laid down in the Assessee's own case as well as in the case of Commissioner of Income-Tax Vs. Computer Age Management Services (P.) Ltd. cited supra.

17. Therefore, the issue regarding depreciation under the provisions and rules are to be re-considered based on those judgments, and more so, with reference to the facts and circumstances established by the Petitioner company.

18. Under these circumstances, this Court is of the opinion that the matter is to be remitted back for re-consideration of those issues. The matter is to be remitted back mainly on the ground that the rectification proceedings under Section 154 of the Act were initiated and subsequently, not continued. Thereafter, the re-opening of assessment was initiated under Sections 147 and 148 of the Act. One issue is admittedly the same, which was raised in the rectification proceedings, and the other issue relating to software key was not adjudicated elaborately in the adjudication order. However, the issue relatable to software key is also said to be considered by the Assessing Officer.

19. For these reasons, the Respondents have to re-consider the reasons and take a fresh decision for the continuance of the re-opening proceedings. Accordingly, the impugned order of disposal passed by the First Respondent in proceedings No. PAN : AAACD 3312 M dated 02.11.2015 alone is quashed. The Respondents are directed to re-consider the objections raised by the Petitioner /Assessee-Company on 18.08.2015, with reference to the issues raised and pass orders on merits and in accordance with law after affording opportunities to the Assessee-Company. The said exercise shall be completed as expeditiously as possible.

20. With the above directions, the Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar

Maya

To

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    Large Taxpayer Unit
    1775, Jawaharlal Nehru Inner Ring Road
    Anna Nagar Western Extension
    Chennai – 600 101.

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+1CC to Mr.A.P.Srinivas, Advocate, SR.No. 45334

W.P. No. 2025 of 2016

BS(CO)
B.VC (29/09/2021)