IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29-07-2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP Nos.38884 of 2015 and 1143 of 2016
And
MP Nos.1 of 2015 and 875 of 2016

M/s.Sesa Sterlite Limited,
(Old name Sterlite Industries (India) Ltd.),
Now known as 'M/s.Vedanta Limited',
Represented by its Manager-Finance,
Sri Rajkumar Basak, S/o.Krishna Chandra Basak,
Sterlite Copper, SIPCOT Industrial Complex,
Madurai Bypass Road,
T.V.Puram P.O.,
Thoothukudi,
Tamil Nadu – 628 002.

..Petitioner in WP 38884/2015

M/s.Sesa Sterlite Limited,
(Previously known as Sterlite Industries (India) Ltd.),
Then known as M/s.Sesa Goa Ltd.,
Then known as M/s.Sesa Sterlite Ltd., and
now known as 'M/s.Vedanta Limited',
Represented by its Manager-Finance,
Sri Rajkumar Basak, S/o.Krishna Chandra Basak,
Sterlite Copper, SIPCOT Industrial Complex,
Madurai Bypass Road, T.V.Puram P.O.,
Thoothukudi,
Tamil Nadu – 628 002.

.. Petitioner in WP 1143 of 2016

vs.

Dispute Resolution Panel-2 (DRP-2),
Room No.714, 7th Floor,
Income Tax Office,
BMTC Building,
80 Feet Road,
Koramangala,
Bangalore – 560 095.

..R-1 in both WPs

Deputy Commissioner of income Tax,
Corporate Circle-6(2),
7th Floor, Room No.705,
Wanaparthy Block,
121, Mahatma Gandhi Road,
Nungambakkam,
Chennai - 600 034. ..R-2 in both WPs

Assistant Commissioner of Income Tax,
Circle I (1),
Aayakar Bhavan,
Plot No.5, EDC Complex,
Patto Plaza,
Panaji,
Goa – 403 001. ..R-3 in WP 1143/2016

WP 38884 of 2015 is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records in F.No.139/DRP-2-BNG/2015-16 dated 24.11.2015 relating to Assessment Year 2011-2012 on the file of the first respondent herein and quash the same.

WP 1143 of 2016 is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records in PAN:AABS4955Q dated 29.12.2015 relating to Assessment Year 2011-2012 on the file of the third respondent and quash the same.

For Petitioner in both WPs	:	Mr.R.V.Easwar, Senior Counsel for Mr.G.Baskar and Mr.M.P.Senthil Kumar.
For Respondents in both WPs	:	Mr.A.P.Srinivas, Senior Standing Counsel for Income Tax.

C O M M O N   O R D E R

WP 38884 of 2015 is filed questioning the directions issued under Section 144-C(5) of the Act dated 24.11.2015.

2. WP 1143 of 2016 is filed challenging the final assessment order dated 29.12.2015 passed under Section 143(3) read with Section 92CA and Section 144-C(13) of the Act

3. Both the above two writ petitions are filed pertaining to the assessment year 2011-2012.

4. WP No.38884 of 2015 is taken as a lead case as the order passed by the Dispute Resolution Panel under Section 144-C (5) of the Income Tax Act, is challenged.

5. Elaborate discussion regarding the disputed facts became unnecessary as the first respondent passed the final assessment order, which is appealable. However, it is brought to the notice of this Court that there is a blatant violation of the provisions of the Income Tax Act, with reference to the order passed by the Dispute Resolution Panel under Section 144-C (5) of the Income Tax Act, affecting the rights of the Assessee and therefore, if the legal issues, hitting the rights of the Assessee, are adjudicated, the same would be sufficient for the purpose of disposing of the other writ petition also.

6. The facts in general are not in dispute. The issue raised is that whether the Dispute Resolution Panel is competent to reject the objections on account of non-appearance of the Assessee on the hearing date.

7. The learned Senior Counsel, appearing on behalf of the writ petitioner, drawn the attention of this Court with reference to the order impugned passed by the Dispute Resolution Panel [herein after referred to as the 'DRP', in short]. The said order impugned would reveal that “the case was fixed for hearing on 20.11.2015 at 11.30 A.M. before the Dispute Resolution Panel (DRP-2). On the date of hearing nobody appeared on behalf of the Assessee. No request for adjournment was received. This shows the Assessee is not interested in pursuing the objections filed before DRP. Therefore, the objections filed by the Assessee deserve to be rejected. Accordingly, the objections are being rejected. The directions of this Panel, as above, are hereby communicated to the Assessee and the Departmental Authorities concerned as per the provisions of Section 144-C(5) of the Income Tax Act.”

8. It is not in dispute that the DRP consists of three Commissioners of Income Tax Department and perusal of the order would reveal that the Assessee had not appeared on the date of hearing, i.e., on 20.11.2011 at 11.30 A.M. However, the DRP has not considered the objections already on file and there was no discussion or finding in respect of the objections raised by the Assessee on merits.

9. The DRP has rejected the objections merely on the ground that the Assessee had not appeared. Rejection of the

objections due to non-appearance resulted denial of an opportunity of adjudication before the DRP to the Assessee. Under these circumstances, the question raised is, whether the DRP has got powers/competency under Section 144-C of the Income Tax Act, to reject the objections merely on the ground that the Assessee has not appeared on the date of hearing.

10. Sub-section (2) of Section 144-C of the Income Tax Act, contemplates that "On receipt of the draft order, the eligible assessee shall, within thirty days of the receipt by him of the draft order,—

(a) file his acceptance of the variations to the Assessing Officer; or

(b) file his objections, if any, to such variation with,—

(i) the Dispute Resolution Panel; and

(ii) the Assessing Officer."

11. Therefore, on receipt of the draft order, the Assessee gets a right to file his objections, if any to such variations with the DRP and the Assessing Officer. Thus, the objections, if any, to be raised must be filed before the DRP as well as the Assessing Officer concerned. If no objections are filed under sub-section (3) of Section 144-C of the Act, the Assessing Officer shall complete the assessment on the basis of the draft order. However, if an objection is filed by the Assessee, then sub-section (5) of Section 144-C of the Income Tax Act, would come into operation. Sub-section (5) of Section 144-C of the Income Tax Act, denotes "The Dispute Resolution Panel shall, in a case where any objection is received under sub-section (2), issue such directions, as it thinks fit, for the guidance of the Assessing Officer to enable him to complete the assessment". Therefore, it is duty mandatory on the part of the DRP to decide the objections on merits.

12. The DRP is undoubtedly having certain Expertise in the Tax Regime. Thus, adjudication before the DRP is a valuable opportunity provided both to the Assessee as well as to the Assessing Officer. Either of the parties may get guidance for the purpose of completion of the assessment proceedings. Thus, the importance attached to the DRP under the Income Tax Act, at no circumstances, be undermined.

13. The Statute contemplates, on receipt of objections from the Assessee, the DRP has to issue certain directions as it thinks fit for the guidance of the Assessing Officer. Thus, an adjudication before the DRP is a valuable opportunity to the Assessee, provided under the Income Tax Act and such a right cannot be taken away without complying with the provisions of the Act, in its letter and spirit.

14. The Courts are not empowered to add any language to the Statute and the language adopted is to be interpreted constructively, keeping in mind the purpose and object of the Income Tax Act. When the Income Tax Act contemplates a right to an Assessee, then such a right must be allowed to be exercised in the manner prescribed under the Income Tax Act. Thus, if an objection is filed under Section 144-C(2)(b) of the Act, the said objection is to be dealt with in the manner prescribed in the other provisions and in the event of any failure, it is to be construed that the right conferred to an Assessee is taken away.

15. Let us now consider sub-section (6) of Section 144-C of the Income Tax Act, which stipulates "The Dispute Resolution Panel shall issue the directions referred to in sub-section (5), after considering the following, namely:—

(a) draft order;

(b) objections filed by the assessee;

(c) evidence furnished by the assessee;

(d) report, if any, of the Assessing Officer, Valuation Officer or Transfer Pricing Officer or any other authority;

(e) records relating to the draft order;

(f) evidence collected by, or caused to be collected by, it; and

(g) result of any enquiry made by, or caused to be made by, it."

16. Sub-section (6) of Section 144-C of the Income Tax Act, would indicate that DRP shall issue directions. The question arises whether issuing direction is mandatory or discretionary. The language employed is 'shall' both under sub-sections (5) and (6) of Section 144-C of the Income Tax Act. Therefore, the DRP has no option but to strictly follow sub-sections (5) and (6) of Section 144-C of the Income Tax Act.

17. Under sub-section (5) of Section 144-C of the Act, the DRP is bound to issue directions as it thinks fit for the guidance of the Assessing Officer and under sub-section (6), the DRP shall issue directions referred to in sub-section (5) after considering the issues contemplated from sub-clauses (a) to (g) under sub-section (6) of Section 144-C of the Income Tax Act.

18. Sub-section (6) of Section 144-C of the Act, unambiguously states that the DRP is bound to consider the materials denoted as the case may be and issue suitable directions as it thinks fit. Therefore, the DRP has no option but to deal with objections, if any, filed by an eligible Assessee on merits and, in the event of non-consideration, it is to be construed that the right conferred under the Act, to an

Assessee has not been complied with.

19. Sub-section (7) of Section 144-C of the Act, states that "The Dispute Resolution Panel may, before issuing any directions referred to in sub-section (5),—

(a) make such further enquiry, as it thinks fit; or

(b) cause any further enquiry to be made by any income-tax authority and report the result of the same to it."

20. Sub-section (8) of Section 144-C of the Act, also states that "The Dispute Resolution Panel may confirm, reduce or enhance the variations proposed in the draft order so, however, that it shall not set aside any proposed variation or issue any direction under sub-section (5) for further enquiry and passing of the assessment order.

Explanation.—For the removal of doubts, it is hereby declared that the power of the Dispute Resolution Panel to enhance the variation shall include and shall be deemed always to have included the power to consider any matter arising out of the assessment proceedings relating to the draft order, notwithstanding that such matter was raised or not by the eligible assessee".

21. Sub-section (10) of Section 144-C of the Act, makes it clear that "every direction issued by the Dispute Resolution Panel shall be binding on the Assessing Officer". Therefore, sub-section (7) of Section 144-C of the Act, provides discretion to the DRP to make such further enquiry as it thinks fit. The term, makes it further clear that the enquiry is discretionary and may be done on need basis. If the DRP is of an opinion that further enquiry is required, then the DRP may at its discretion to conduct such enquiry and if no such further enquiry is required, then the DRP may comply with sub-sections (5) and (6) of Section 144-C of the Act, and issue suitable directions as it thinks fit to the Assessing Officer, which is binding on the Assessing Officer as per sub-section (10) of Section 144-C of the Income Tax Act.

22. Sub-section (8) of Section 144-C of the Act, is also discretionary. Cogent reading of the sub-sections would make it crystal clear that the right of an Assessee is conferred for filing objections before the DRP and the Assessing Officer and in the event of no such objections, the Assessing Officer shall complete the assessment. If any objection is received, then sub-section (5) of Section 144-C of the Act, would come into operation. Once the objections are before the DRP, then the DRP is bound to issue directions as it thinks fit for the guidance of the Assessing Officer and such directions must be in compliance with sub-section (6) of Section 144-C of the Income

Tax Act.

23. Thus, sub-sections (5) and (6) to Section 144-C of the Income Tax Act, are mandatory provisions as far as the DRP is concerned and sub-sections (7) and (8) of Section 144-C of the Act, are discretionary powers provided under the said provisions. In the event of any violation of sub-sections (5) and (6) of Section 144-C of the Act, it is to be construed that the right of an Assessee is taken away, resulting violation of the provisions of the Act. However, if sub-sections (7) and (8) are violated, the same would not infringe the right of an Assessee as the powers conferred on the DRP is only discretionary and not mandatory.

24. Sub-section (11) to Section 144-C of the Act, denotes that "no direction under sub-section (5) shall be issued unless an opportunity of being heard is given to the assessee and the Assessing Officer on such directions which are prejudicial to the interest of the assessee or the interest of the revenue, respectively".

25. The above sub-section unambiguously clarifies that DRP shall not issue any directions under sub-section (5) unless an opportunity of hearing is given to an Assessee and the Assessing officer.

26. Sub-section (11) to be linked with sub-section (2) (b)(i) and (ii) of Section 144-C of the Act, because an opportunity is bound to be given to the Assessee as well as to the Assessing Officer.

27. Before the DRP, both the Assessee as well as the Assessing Officer are getting an opportunity to adjudicate certain issues for the purpose of solution and the correctness of the decisions. Therefore, the opportunity contemplated under the Act for the Assessee as well as the Assessing Officer must be allowed to be exercised in complete form, so as to reach the purpose and object for which the DRP is constituted under the Act itself. It is a valuable right provided both to the Assessee as well as to the Assessing Officer. Thus, the DRP, being a Quasi Judicial Authority, is bound to pass orders as it thinks fit only on merits and such Quasi Judicial Authorities are not empowered to reject the objections merely by stating that the Assessee had not appeared before the DRP. Even in case of non-appearance, the matters are to be decided on merits, as the objections in writing filed by the petitioner is very much available on record before the DRP. Rejecting the objections on the ground of non-appearance may be an easy way out for the disposal of the objections, however, the spirit and the intention of Legislation, at no circumstances, be diluted and

this apart, the Quasi Judicial Functionaries are not empowered to pass any such orders, rejecting the objections merely on the ground of non-appearance. Further, the Assessee may not get an opportunity by filing a petition for restoration to restore the objections for the purpose of complete objection. This being the implications, the DRP is legally bound to adjudicate the objections and pass orders on merits, even in case of the Assessee or the Assessing Officer failed to appear for personal hearing.

28. The very purpose of filing an objection before the Assessing Officer is to ensure that the Assessing Officer may also raise an objection against the objections filed by the Assessee. Thus, the Act contemplates a balanced procedure in order to comply with the principles of natural justice by providing an opportunity to all the parties, who all are entitled to put forth their respective cases before the DRP.

29. Coming to sub-section (11) of Section 144-C of the Act, the Assessing Officer is entitled to defend the revenue and the Assessee is entitled to put forth his case based on the objections or otherwise. Thus, sub-section (11) is also significant with reference to the opportunities to be granted to the parties before the DRP. The DRP is a Quasi Judicial Authority. Therefore, on receipt of any objections, the DRP cannot reject the same due to non-appearance of parties. Even in case of absence of either of the parties (Assessee and Assessing Officer), the DRP is bound to decide the objections on merits and issue suitable directions as it thinks fit.

30. In the present case, admittedly, the Assessee filed an objection both before the DRP and before the Assessing Officer. The DRP issued notice to the Assessee, fixing the hearing date. On certain personal grounds, as stated by the petitioner, the Assessee could not able to appear on the date of hearing. However, the DRP rejected the objections only on the ground that the Assessee had not appeared before the DRP on the date of hearing. Thus, this Court has no hesitation in forming an opinion that the mandatory provisions under sub-sections (5) and (6) of Section 144-C have not been complied with by the DRP, while dealing with the objections filed by the Assessee under sub-section (2)(b) of Section 144-C of the Act.

31. In this regard, the Income Tax (Dispute Resolution Panel) Rules, 2009 also may be looked into. The said Rules were framed in exercise of the powers conferred under sub-section (14) of Section 144-C of the Act. The Central Board of Direct Taxes make Rules to regulate the procedures of the DRP.

32. Rule 7 of the Income Tax (Dispute Resolution

Panel) Rules, 2009 provides hearing of objections.

33. Rule 10 of the Income Tax (Dispute Resolution Panel) Rules, 2009 deals with issue of directions. Sub-clauses (1) to (3) of Rule 10 of the Income Tax (Dispute Resolution Panel) Rules, 2009 enumerate that

"(1) On the date fixed for hearing or on any other date to which the hearing may be adjourned, if the eligible Assessee or his authorized representative do not appear, or when they appear, upon hearing the objections, the panel may, within the specified time, issue such directions as it deems proper.

(2) While hearing the objections, the panel shall not be confined to the grounds set forth in the objections but shall have power to consider any matter or grounds arising out of the proceedings.

(3) On conclusion of hearing, the panel shall issue directions within the specified period".

34. Therefore, the manner in which the objections are to be considered by the DRP, are well defined both under the Income Tax Act as well as under the Income Tax (Dispute Resolution Panel) Rules, 2009.

35. The learned Senior Standing Counsel, appearing on behalf of the respondents, while rebutting the contentions raised on behalf of the petitioner, contended that in the present case, final assessment order has been passed and the directions issued by the DRP had not been taken into consideration for the purpose of passing an assessment order by the Assessing Authority and further, the grounds raised in the objections before the DRP may be raised before the Appellate Authority by preferring an appeal and therefore, the writ petition is liable to be rejected.

36. In other words, it is contended that the DRP has rejected the objections and thereafter the assessment order has been passed and the Assessee is not aggrieved from and out of the non-consideration of the objections by the DRP and therefore, the Assessee has to prefer a statutory appeal for the purpose of redressing his grievances in the manner known to law.

37. It is contended that once the final assessment order is passed, the earlier proceedings need not be interfered with by the Courts and the Assessee has to prefer an appeal before the competent Appellate Authority.

38. In this regard, this Court is of the considered

opinion that principles of natural justice and its violation with regard to certain disputed issues need not be gone into by the High Court in the writ proceedings, so also the jurisdictional issues, if relatable to the disputed facts, then also the aggrieved person may be granted liberty to prefer an appeal for effective adjudication of such disputes. However, if the principles of violation of natural justice or the jurisdiction directly hitting the provisions of the Statute is established, then the High Court has to look into the seriousness of such violations for the purpose of restoring the right of the aggrieved persons and issue suitable orders to provide such opportunities as contemplated.

39. This apart, the DRP consists of three Senior most Commissioners of Income Tax Department. It is a decision, which is to be taken by the Panel having expertise in the income tax matters. Thus the right conferred and the importance at no circumstances be undermined.

40. The learned Senior Standing Counsel, appearing on behalf of respondents, raised a pertinent point that the Assessee would get an opportunity to raise all the points raised in the objections before the Assessing Officer as well as before the Appellate Authority. However, such a submission has no force as the valuable right conferred under the Act to the Assessee can never be taken away. In the event of glaring violation of the provisions of the Act, the High Court has to provide an appropriate relief to the aggrieved persons. In other words, if the point of jurisdiction or enforcement of right directly hitting the provisions of the Income Tax Act, then the High Court has to entertain a writ petition. In the event of failure, the High Court would be failing in its constitutional duty to restore the valuable right of an Assessee conferred under the Income Tax Act. The principles of natural justice being an integral part of Article 14 of the Constitution of India, the direct violation of the provisions in this regard is a ground for entertaining a writ petition. Where the violation of principles of natural justice is raised and interpretation of the provisions of the Income Tax Act is imminent, then it is necessary to entertain the writ petition to ascertain the nature of rights conferred to an Assessee or the Assessing Officer under the provisions of the Act. While doing so, if the rights violated are patent and caused infringement of right to either of the parties, then the aggrieved person is entitled for an appropriate relief.

41. Thus, the objections raised by the learned Senior Standing Counsel appearing on behalf of respondents, stand rejected.

42. As far as the grounds on merits are concerned, the learned Senior Counsel, appearing on behalf of the petitioner, fairly made a submission that all such disputes are to be adjudicated before the Competent Authority as the point of jurisdiction as well as the manner in which an order must be passed by the Dispute Resolution Panel, which is under challenge in the present writ petition.

43. This being the factum established, this Court is of the considered opinion that the DRP had failed to act in the manner as contemplated, more specifically, under sub-sections (5) and (6) of Section 144-C of the Income Tax Act and therefore, the order passed, rejecting the objections submitted by the Assessee, merely on the ground that the Assessee has not appeared on the hearing date, is infirm and liable to be quashed and accordingly, the same is quashed.

44. In view of the fact that the proceedings before the DRP is quashed, the consequential assessment order passed by the Assessing Authority is also quashed. The proceedings before the DRP stands restored and the DRP is directed to consider the objections in the manner prescribed under sub-sections (5) and (6) of Section 144-C of the Income Tax Act and by following the other relevant provisions of the Act and Rules and pass an order afresh by affording an opportunity to the Assessee as well as to the Assessing Officer. The said exercise is directed to be done as expeditiously as possible. Thereafter, the Assessing Officer is at liberty to pass further orders by following the procedures as contemplated. Accordingly, WP No. 38884 of 2015 stands allowed.

45. In this view of the matter, WP No.1143 of 2016 also stands allowed.

46. In the result, WP Nos.38884 of 2015 and 1143 of 2016 stand allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS)

// True Copy//

Sub Assistant Registrar

Svn

To

1. The Dispute Resolution Panel-2 (DRP-2),
   Room No.714, 7th Floor,
   Income Tax Office,
   BMTC Building,
   80 Feet Road,
   Koramangala,
   Bangalore – 560 095.

2. The Deputy Commissioner of income Tax,
   Corporate Circle-6(2),
   7th Floor, Room No.705,
   Wanaparthy Block,
   121, Mahatma Gandhi Road,
   Nungambakkam,
   Chennai - 600 034.

3. The Assistant Commissioner of Income Tax,
   Circle I (1),
   Aayakar Bhavan,
   Plot No.5, EDC Complex,
   Patto Plaza,
   Panaji,
   Goa – 403 001.

+2ccs to Mr.A.Baskar, Advocate, S.R.No.36710,36711
+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.37028

WP Nos.38884 of 2015
and
1143 of 2016

GPL(CO)
SU(19/08/2021)