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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02-08-2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP No.27102 of 2016

And

WMP No.23283 of 2016

M/s.FCA Engineering India Private Limited,
(Formerly known as Chrysler India Automotive
Private Limited),
RMZ Millennia Business Park-1,
Campus 1-A, 5th Floor,
143, Dr.MGR Road,
Kandanchavadi,
Perungudi,
Chennai-600 096.

..Petitioner

vs.

1. Assistant Commissioner of Income Tax,
Corporate Circle 1(2),
Room No.613, Wanaparthy Block,
121 Mahatma Gandhi Road,
Chennai-600 034.
2. Principal Commissioner of Income Tax-1,
7th Floor, New Block,
121, Mahatma Gandhi Road,
Chennai-600 034.

..Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records on the file of the first respondent and quash the impugned proceedings in AAGCA6907M/09-10 dated 18.07.2016 along with notice issued by the first respondent under Section 148 of the Income Tax Act, dated 03.03.2016.

For Petitioner : Mr.N.V.Balaji



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For Respondents : Mr.D.Prabhu Mukunth Arunkumar,
Junior Standing Counsel for
Income Tax.

O R D E R

The order dated 18.07.2016, disposing of the objection filed by the Assessee for reopening of the assessment under Section 147 of the Income Tax Act, 1961, is under challenge in the present writ petition.

2. The petitioner is a Private Limited Company incorporated under the Companies Act, 1956 and is a wholly owned subsidiary of Chrysler Netherlands Distribution BV, a Company incorporated in Netherlands. The name of the petitioner-Company was changed to FCA Engineering India Private Limited from Chrysler India Automotive Private Limited with effect from 23.02.2015.

3. The petitioner, being set up as a 100% Export Oriented Unit (EOU) under the Software Technology Park Scheme of India (STPI), is engaged in the business of providing engineering and design services to its group companies and is eligible for deduction under Section 10A of the Income Tax Act.

4. The petitioner filed its return of income for the assessment year 2009-2010 on 30.09.2009. Notice under Section 143(2) of the Income Tax Act, was initiated for scrutiny procedures on 30.09.2010. A reference was made under Section 92CA of the Income Tax Act, to the Transfer Pricing Officer (TPO) for determining arm's length price on 19.05.2011. The Transfer Pricing Officer passed an order on 09.01.2013. Considering all the materials available on record, the Assessing Officer passed final assessment order on 28.02.2013.

5. A notice under Section 148 of the Income Tax Act, was issued for reopening of the assessment year 2009-2010. The petitioner confirmed the return of income already filed in response to the notice. Thereafter, the reasons for reopening was furnished to the Assessee in proceedings dated 21.04.2016. The petitioner submitted its detailed objections vide letter dated 17.05.2016 and the said objections were rejected by the first respondent in order dated 18.07.2016.

6. The learned counsel for the petitioner mainly contended that the very initiation of reopening proceedings is beyond the scope of jurisdiction and in respect of other assessment years, the benefit of Section 10A of the Income Tax



Act, was extended in favour of the petitioner.

7. This apart, the reasons furnished are not in consonance with the mandatory requirements as contemplated under Section 147 of the Income Tax Act, 1961. The reasons stated for reopening of assessment is nothing but change of opinion, as the issues raised were adjudicated in the original assessment proceedings and considered by the Assessing Authority. The reopening is made beyond the period of four years and within six years and therefore, the requirements as contemplated under the proviso clause to Section 147 of the Income Tax Act, are to be complied with. Thus, the initiation itself is without jurisdiction.

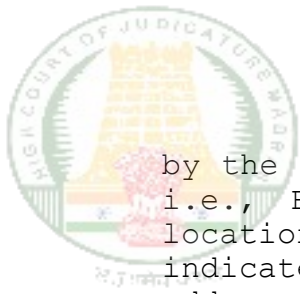
8. The learned counsel for the petitioner to substantiate the said contention, drawn the attention of this Court with reference to the spirit of Section 10A of the Income Tax Act. It is contended that as per Section 10A sub-section (2), the petitioner is entitled for the benefit of the said provision and it was rightly considered by the Assessing Authority and therefore, the very same ground cannot be a reason for reopening of assessment under Section 147 of the Income Tax Act.

9. In view of the fact that the issue was considered elaborately and the reopening is made beyond four years and the very same reason is furnished for the purpose of reopening, it is to be construed that the proceedings are nothing but change of opinion and not based on any tangible materials available on record.

10. The learned counsel for the petitioner relied on the instruction No.1 of 2006 dated 31.03.2006 issued by the Central Board of Direct Taxes (CBDT), wherein the deduction under Section 10A of the Income Tax Act was clarified. As per the said clarification, the petitioner-Company is entitled for the benefit and it was rightly granted by the Assessing Authority originally. While-so, the very reason for reopening is untenable based on the instructions issued by the Central Board of Direct Taxes. Therefore, the present writ petition is to be allowed.

11. The learned Standing Counsel, appearing on behalf of the respondents, disputed the contentions raised on behalf of the petitioner by stating that the petitioner has not fully and truly disclosed the informations as required under the provisions of the Income Tax Act. Under Section 10A of the Income Tax Act, the Company must be in any one of the declared Special Economic Zone.

12. However, even in the details relating to the claim



by the exporter for deduction Section 10A of the Income Tax Act, i.e., Form No.56-F, the Assessee has not stated about their location of functioning and the said Form categorically indicates that the Assessee must mention the location and address of undertaking in the Form enclosed by the petitioner itself. In page No.33 of the typed set of papers filed along with the present writ petition, the petitioner-Company has mentioned the address alone and the location has not been stated and this apart, the respondents have stated that the petitioner-Company is not functioning in any one of the Special Economic Zone and therefore, they are not entitled for the benefit of Section 10A of the Income Tax Act.

13. The learned Standing Counsel, appearing on behalf of the respondents, contended that even in such cases, it is for the Assessee to submit all materials and evidences to establish his case and such an adjudication need not be done in the present writ proceedings by the High Court. It is only initiation of proceedings, which is under challenge and therefore, the merits are to be adjudicated by the Assessing Authority and the petitioner-Company is at liberty to avail the opportunities to be provided for the purpose of establishing their case. Thus, the writ petitioner-Company has not established any prima facie grounds for the purpose of assailing the institution of proceedings under Section 147/148 of the Income Tax Act and therefore, the present writ petition is to be rejected.

14. Considering the arguments as advanced by the respective learned counsel appearing on behalf of the parties to the lis, the issue mainly raised in this writ petition is, whether the petitioner-Assessee is eligible to claim the benefit under Section 10A of the Income Tax Act. The point of jurisdiction raised is relating to Section 10A of the Income Tax Act. The reasons for reopening is also connected with the said provision. Thus, the interpretation of the said provision is required for the purpose of deciding the issue raised in this writ petition.

15. Let us consider Section 10A of the Income Tax Act. Sub-section (1) enumerates that "subject to the provisions of this section, a deduction of such profits and gains as are derived by an undertaking from the export of articles or things or computer software for a period of ten consecutive assessment years beginning with the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce such articles or things or computer software, as the case may be, shall be allowed from the total income of the Assessee".



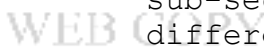
produce articles or things or computer software, on or after the 1st day of April, 1981 in any free trade zone. Sub-clause (i) (a) contemplates that the manufacture must be in any free trade zone. Secondly sub-clause (i)(b) to sub-section (2) stipulates that commencing on or after the first day of April, 1994, in any electronic hardware technology park, or, as the case may be, software technology park. Thus, if the commencement of manufacture or produce articles or things or computer software, on or after the first day of April, 1981, in any electronic hardware technology park or as the case may be, software technology park.

18. Therefore, the case of the petitioner falls under sub-clause (i)(b) of Section 10A of the Income Tax Act. They are manufacturing in the software technology. The said factum is not disputed by the Revenue also. Therefore, they claim commencing on or after the 1st day of April 1994. If commencement of manufacture is in software technology park, then the benefit under Section 10A of the Act is to be extended is also the arguments advanced.

19. Sub-clause (i)(c) denotes commencement of manufacture on or after the first day of April, 2001 in any special economic zone. Therefore, if any manufacture begins on or after the first day of April, 2001, it must be in any Special Economic Zone.

20. To make the interpretation more clear, commencement of manufacturing after 01.04.1981 in any free trade zone or commencement of manufacture on or after 01.04.1994 in any electronic hardware technology park or in between sub-clauses (i)(b) and (i)(c), the word 'or' is not contemplated. Therefore, clause(c) is independent and clauses (a) and (b) are connected to each other. Clauses (a) and (b) are to be read together for the purpose of determining the eligibility and clause (c) is to be interpreted independently for the purpose of considering eligibility to grant the benefit of Section 10A of the Income Tx Act. Because clause (a) ends with the option or in between clauses (b) and (c), there is no such option is provided. Thus, the commencement of manufacturing on or after 01.04.2001 must be in any Special Economic Zone. Moreover, the same is also not contemplated. Therefore, sub-clause (i)(c) must be interpreted that commencement of manufacture on or after the first day of April, 2001 must be in any Special Economic Zone.

21. Beyond the scope of interpretation, yet another aspect is to be considered with reference to these three clauses. Sub-section (2) of Section 10A of the Income Tax Act, unambiguously stipulates that this section applies to any undertaking which fulfils all the following conditions.



22. As far as sub-clauses (i)(a), (i)(b) and (i)(c) to sub-section (2) are concerned, it is to be understood that different spells are contemplated in order to determine the eligibility. The three spells indicate that commencement of manufacture from 01.04.1981, which would impliedly end on 31.03.1994 and commencement of manufacture on or after 01.04.1994 and impliedly ends on 31.03.2001. Thereafter, sub-clause (i)(c) states that the manufacture commencing on or after 01.04.2001.

24. The case of the petitioner, admittedly, that the manufacture was commenced in the year 2008. When the manufacture or produce articles or things or computer software commences in the year 2008, then the case of the petitioner squarely falls under sub-clause (i)(c) to sub-section (2) of Section 10A of the Income Tax Act. Therefore, the petitioner must manufacture in any Special Economic Zone as the manufacture, admittedly, commenced in the year 2008. The petitioner is not entitled to claim the benefit under sub-clause (i)(b) software not manufacturing prior to 2001, so as to claim the benefit of Section 10A of the Income Tax Act on the ground that they are manufacturing any software technology park.

26. This being the factum established, the petitioner-Company is not entitled to avail the benefit of Section 10A of the Income Tax Act and if at all any contra materials are available with the petitioner, it is for them to place it before



the Assessing Authority for the purpose of availing the benefit for which they are entitled under the provisions of the Income Tax Act. However, the adjudication in this writ petition is done with reference to the interpretations to be considered for the purpose of availing the benefit of Section 10A of the Income Tax Act and regarding all other factual disputes, it is for the Assessee to pursue the same before the Assessing Authority for the purpose of completion of reassessment proceedings. If at all the writ petitioner-Company has already claimed the benefit and in order to establish the said claim, the writ petitioner is at liberty to submit the documents and materials at the time of participating in the reassessment proceedings.

27. With the above observations, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(CS-III)

// True Copy//

Sub Assistant Registrar

Svn

To

1. Assistant Commissioner of Income Tax,
Corporate Circle 1(2),
Room No.613, Wanaparthi Block,
121 Mahatma Gandhi Road,
Chennai-600 034.
 2. Principal Commissioner of Income Tax-1,
7th Floor, New Block,
121, Mahatma Gandhi Road,
Chennai-600 034.
- +1cc to Mr.N.V.Balaji, Advocate, S.R.No.38122

WP 27102 of 2016

SR(CO)
SU(25/08/2021)