IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2021

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THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

W.P.No.38390 of 2016

and

W.M.P.No.32879 of 2016

McKinsey Global Services India Private Limited,
Rep., by its Director, Ms.Dorte Landwehr,
5/142, Tower B, 17-19th Floor,
World Trade Centre, Rajiv Gandhi Salai,
OMR Perungudi Chennai, Chennai-96. .. Petitioner

[Cause title amended vide order dated 21.06.2021
in WMP No.13645 of 2021 in WP No.38390 of 2016]

-vs-

1. The Assistant Commissioner of Income Tax,
   Corporate Circle 3(2),
   Room No.414, IV Floor, Wanaparthy Block,
   121, Mahatma Gandhi Road, Chennai-600 034.

2. Commissioner of Income Tax-3,
   121, Mahatma Gandhi Road,
   Chennai-600 034. ..Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records on the file of the first respondent and quash the impugned order in PAN: AAACV3342H/502-V/2009-10 dated 04.10.2016 along with notice issued by the first respondent under Section 148 of the Income Tax Act dated 08.02.2016.

For Petitioner : Mr.N.V.Balaji

For Respondents : Mr.D.Prabhu Mukunth Arunkumar,
Standing Counsel

ORDER

The order dated 04.10.2016, issued by the first respondent, disposing of the objections filed by the writ petitioner, is under challenge in the present writ petition.

2.The petitioner, a wholly owned subsidiary of McKinsey & Company, Inc., was incorporated on 16.06.1997 as a private limited company with its registered office at Chennai. The petitioner has service centres located in Chennai and Trivandrum and were registered as STPI units and availed tax holiday benefit under Section 10A of the Income Tax Act, 1961 (hereinafter referred to as "the Act"). The company was engaged in the business of rendering production of presentations, related development (VA services). The petitioner filed its return of income for the assessment year 2009-10 on 29.09.2009 and the same was scrutinized and by following the procedures, the assessment order under Section 143(3) was passed on 13.03.2013 accepting the income returned by the petitioner. Thereafter, the first respondent initiated Section 147 proceedings and issued notice under Section 148 of the Act on 08.02.2016. The petitioner was directed to submit details, books of accounts, etc., vide notice dated 04.03.2016 issued under Section 143(2) of the Act. The petitioner requested for reasons for reopening. The reasons were furnished and the petitioner filed its detailed objections for the reopening proceedings initiated under Section 147 of the Act.

3.The learned counsel appearing on behalf of the petitioner referred to the objections submitted by the petitioner dated 27.09.2016 and contended that the objections are not dealt with based on the merits and in accordance with law. The authority competent was expected to consider all the objections and provide a finding with reference to the established facts and based on the principles to be followed and also the decisions of this Court. However, the impugned order, disposing of the objections, would reveal that the objections submitted by the petitioner were not considered and therefore, the order impugned is liable to be set aside.

4.The learned counsel for the petitioner referred to Circular No.37 of 2016 dated 02.11.2016 issued by the Ministry of Finance, Department of Revenue, Central Board of Direct Taxes regarding deduction of enhanced profits.

5.The grievance of the petitioner is that the said circular issued by the Ministry of Finance has not been considered by the Assessing Officer while disposing of the objections. The said circular is an important one for the purpose of defending the case of the writ petitioner. Thus, the order impugned is to be set aside.

6.The learned Standing Counsel brought to the notice of this Court that the circular now referred to by the petitioner dated 02.11.2016 was issued by the Ministry of Finance after passing the impugned order dated 04.10.2016. Thus, there was no occasion to deal with the circular by the first respondent at the time of disposing of the objections filed by the petitioner.

7.The learned counsel for the petitioner replied by stating that the objections raised by the petitioner have been accepted by the Ministry of Finance in the said Circular dated 02.11.2016. However, all these factual aspects are to be adjudicated by the authority for the purpose of forming an opinion with reference to the objections filed by the petitioner.

8.It is further contended by the learned Standing Counsel that whatever objections raised in the present writ petition before this Court have not been raised by the petitioner before the competent authority. Even the arguments now advanced were not made before the first respondent. Thus, the first respondent had no occasion to deal with such objections at the time of passing order, disposing of the objections.

9.This Court is of the considered opinion that in view of the fact that the petitioner raised certain new grounds in the present writ petition, the authorities must be provided with an opportunity to deal with such grounds with reference to the facts and circumstances.

10.This being the facts established, this Court is of the considered opinion that the case is to be remanded back for re-consideration in view of certain omissions by the petitioner and with reference to the circular issued by the Ministry of Finance after passing the impugned order.

11.Accordingly, the impugned order passed by the first respondent in proceedings dated 04.10.2016 is set aside. The petitioner is permitted to submit all their further objections, documents, materials etc., to the first respondent within a period of two weeks from the date of receipt of a copy of this order. On receipt of any such further objections, documents etc., from the petitioner, the first respondent is directed to consider the same on merits and in accordance with law and by affording opportunity to the petitioner including personal hearing, if any such request is made and thereafter, dispose of the same within a period of twelve weeks from the date on which the petitioner files their objections and proceed further with the re-assessment proceedings.

12.With the above observations and directions, this writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

abr

To

1. The Assistant Commissioner of Income Tax,
   Corporate Circle 3(2),
   Room No.414, IV Floor, Wanaparthy Block,
   121, Mahatma Gandhi Road, Chennai-600 034.

2. The Commissioner of Income Tax-3,
   121, Mahatma Gandhi Road,
   Chennai-600 034.

+1cc to Mr.N.V.Balaji, Advocate, S.R.No.29105
+1cc to Ms.Hema Muralikrishnan, Advocate, S.R.No.29270

W.P.No.38390 of 2016

UM(CO)
RGA(19/07/2021)