IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2021

CORAM :

THE HON'BLE MR. JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

W.A.No.1963 of 2021
and
C.M.P.Nos.12745 & 12748 of 2021

M/s.Bonfiglioli Transmissions Private Limited
Represented by the authorized signatory,
Balaji G.A.
Plot No.AC7-AC11, SIDCO Industrial Estate,
Thirumudivakkam, Chennai
Tamil Nadu, India – 600 044. ... Appellant/Petitioner

Vs.

1.The Deputy Commissioner of Income Tax,
Transfer Pricing Officer – 1(1),
5th Floor, Tower I, BSNL Building,
No.16, Greams Road,
Chennai – 600 006.

2.The Deputy/Assistant Commissioner of Income Tax,
Corporate Circle 1(2),
121, Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034. .. Respondents/Respondents

Prayer : Writ Appeal filed under Clause 15 of the Letters Patent to set aside the order dated 02.06.2021 made in W.P.No.30606 of 2018.

Prayer in WP.No.30606 of 2018:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari, to call for the records comprised in the impugned order bearing file No.B-105/TPO-1(1)A.Y.2015-16 dated October 30, 2018 made under Section 92CA(3) of the Income Tax Act, 1961 for the Assessment year 2015-16 on the file of the first respondent, quash the same.

For Appellant : Mr.N.V.Balaji

For Respondents: Mr.Hema Muralikrishnan
Senior Standing Counsel

J U D G M E N T

(Judgment was delivered by T.S. SIVAGNANAM, J.)

This Writ Appeal by the writ petitioner is directed against the order dated 02.06.2021 made in W.P.No.30606 of 2018.

2.The appellant filed the writ petition challenging the order passed by the 1st respondent, who is the Transfer Pricing Officer ("TPO" for brevity), who passed the order under Section 92CA(3) of the Income Tax Act, 1961, ("the Act" for brevity), for the Assessment Year 2015-16. The principal ground on which the said order is put to challenge in the writ petition is by contending that, though the assessee had placed reliance on the decision of the Tribunal in the assessee's own case, wherein, identical issue was considered in I.T.A.No.2977/Chny/2017, dated 14.05.2018, the TPO did not even refer to the said decision and mechanically passed the order dated 30.10.2018. Therefore, the appellant contended that judicial discipline would require the TPO to follow the earlier decision of the Tribunal in the assessee's own case and in support of such contention, reliance was placed on the decision in the case of Union of India v. Kamlakshi Finance Corporation Ltd. reported in (1992) 1992 taxmann.com 16 (SC) and other decisions for the said proposition.

3.The learned Single Bench, taking note of the fact that, if the appellant was aggrieved by any of the observations made or findings recorded by the TPO in his order dated 30.10.2018, the appellant/assessee has a remedy by approaching the Dispute Resolution Panel ("DRP" for brevity), has observed that, without exhausting such a remedy, the writ petition would not be maintainable. The appellant is before us contending that the order passed by the TPO is an outcome of clear non-application of mind. Though the appellant/assessee had specifically pointed out about the order of the Tribunal, the TPO has not even referred to the said order and has virtually exercised his powers and failed to follow the decision of the higher authorities, which is binding on the TPO.

4.We are of the considered view that the TPO has passed the order, dated 30.10.2018, pertaining to Assessment Year 2015-16, wherein, certain observations have been made with regard to the Arms Length Price. Whether the said adjustment suggestion made in the order dated 30.10.2018 is sustainable on facts can very well be examined by the DRP, which has been conferred with sufficient jurisdiction in terms of Section 144-C of the Act. Therefore, in our considered view, the appellant should not bypass the said remedy. That apart, we note that, as against the order passed by the Tribunal, which was referred to by the assessee before the TPO, which according to the assessee covers the issue, the Revenue has filed a Tax Case Appeal before this Court in T.C.A.No.811 of 2018 and the said appeal has been entertained and is pending since the year 2018.

5.Be that as it may, since each of the Assessment Year is separate by itself, the assessee can very well agitate all issues before the DRP. It is true that, if identical transactions have been considered for the earlier Assessment Years or for the subsequent Assessment Years, unless there are cogent reasons for the TPO/Assessing Officer to take a different view, normally, the trend in which the assessment has been made will not be upset or a different view will not be recorded. In any event, all issues can very well be agitated by the appellant/assessee before the DRP. We find that, in the counter affidavit filed by the respondent in the writ petition, certain factual issues have been set out to sustain their contention that the decision of the Tribunal for the Assessment Year 2013-14 would not apply. There are also other averments made touching upon the merits of the matter. The assessee has also filed a rejoinder affidavit to the counter affidavit. In the impugned order, we also find that the learned Single Bench has made certain observations or recorded the submissions of the Revenue, touching upon the merits. In our considered view, if the appellant has to avail the remedy provided under Section 144-C of the Act, before the DRP, then the Court would not be justified in making any observation touching upon the merits of the assessment and all issues should be left open.

6.For all the above reasons, the Writ Appeal is dismissed and the order passed by the learned Single Bench is affirmed, giving liberty to the appellant/assessee to approach the DRP. No costs. Consequently, connected miscellaneous petitions are closed.

7.The findings recorded by the learned Single Bench touching upon the merits of the matter stand vacated and it will be open to the appellant to raise all factual and legal issues before the DRP, which shall be considered on merits and in accordance with law.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1.The Deputy Commissioner of Income Tax,
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5th Floor, Tower I, BSNL Building,
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Chennai - 600 006.

2.The Deputy/Assistant Commissioner of Income Tax,
Corporate Circle 1(2),
121, Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034.

+1cc to M/s.Hema Muralikrishnan, Advocate, S.R.No.40864
+1cc to Mr.N.V.Balaji, Advocate, S.R.No.41149

W.A.No.1963 of 2021

SRA(CO)
CB(08/09/2021)