IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2021

CORAM

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Mr.Justice SATHI KUMAR SUKUMARA KURUP

W.A. No. 2415 of 2021
and
C.M.P. Nos.15455 & 15457 of 2021

M/s. Cognizant Technology Solutions
India Private Limited,
Menon Eternity Building,
6th Floor, New No.165, Old No.110,
St. Mary's Road, Chennai. ...Appellant

Vs.

1. Assistant Commissioner of Income Tax,
Large Tax Payer Unit-I,
1775, Jawaharlal Nehru Inner Ring Road,
Anna Nagar Western Extension,
Chennai - 600 101.

2. Commissioner of Income Tax,
Large Tax Payer Unit-I,
1775, Jawaharlal Nehru Inner Ring Road,
Anna Nagar Western Extension,
Chennai - 600 101.
... Respondents

Appeal filed under Clause 15 of Letters Patent, praying to allow the above Writ Appeal by setting aside the order dated 02.08.2021 passed in W.P.No. 10051 of 2015 on the file of this Hon'ble Court and allow the Writ Petition.

Prayer in W.P.No.10051 of 2015:

Writ Petition filed under Article 226 of the Constitution of India to issue Writ of Certiorari calling for the records and proceedings of the case and after examining the legality validity and propriety thereof be pleased to quash the Impugned

Notice dated 28 March 2014 issued under Section 148 of the Income Tax Act 1961 for Assessment Year 2007-08 by the respondent No.1 and the Impugned Orders disposing of Objections dated 5 June 2014 and 29 December 2014 passed by the respondent No.1 as being wholly without jurisdiction and legally invalid.

For Appellant : Mr. N.V.Balaji

For Respondents: Mr. A.N.R.Jayaprathap
Senior Standing Counsel

J U D G M E N T

(Delivered by T.S.Sivagnanam, J.)

This appeal filed by the assessee is directed against the order dated 02.08.2021 in W.P. No.10051 of 2015 filed by the appellant questioning the validity and propriety of the notice dated 28.03.2014 issued by the first respondent under Section 148 of the Income Tax Act, 1961 ('the Act' for short) for the assessment year 2007-08 and the proceedings of the first respondent disposing of the assessee's objections vide proceedings dated 05.06.2014 and 29.12.2014.

2. The writ petition was dismissed by directing the petitioner to participate in the reassessment proceedings and the correctness of the said order is challenged in this writ appeal.

3. Heard Mr. N.V.Balaji, Learned counsel appearing for the appellant and Mr. A.N.R.Jayaprathap, Learned Senior Standing Counsel, who accepts notice on behalf of the respondent.

4. We need not labour much to find a solution to the controversy in the case. The primary ground on which the initiation of the proceedings under Section 147/148 of the Act was questioned by the appellant-assessee is that the identical issue was subject matter of consideration in assessee's own case for the Assessment year 2008-09 and the matter travelled up to Income Tax Appellate Tribunal, Chennai (the Tribunal) and by order dated 11.03.2014, the Tribunal held in favour of the appellant-assessee and the matter had attained finality. Further, the appellant-assessee had contended that the said decision rendered by the Tribunal for the assessment year 2008-09 was followed by the Commissioner of Income Tax (Appeals) in

its order dated 20.03.2014 for the assessment year 2009-10 and there is no distinguishing feature for the assessment year under consideration, viz., 2007-08 for the Assessing Officer to take a different view.

5. Further, the assessee also contended that in terms of the Circular No.694, Notification No. 11521 and Circular No. 1, the activities for which the present re-assessment proceedings have been initiated are squarely eligible for deduction under Section 10-A/10-AA of the Act.

6. Apart from the above grounds raised by the assessee, other grounds were also raised justifying their claim for deduction under Section 10-A/10-AA of the Act by referring to the nature of activities of the appellant-assessee. That apart, it was pointed out that the reopening having been done after a period of four years from the end of the assessment year under consideration, unless fresh tangible material is available with the assessing officer the reopening cannot be sorted out and it would amount to review of the assessment order.

7. The objections were disposed of by the Assessing Officer vide proceedings dated 05.06.2014 and 29.12.2014 and on perusal of the said proceedings, we find that the Assessing Officer has not considered the specific objection raised by the assessee with regard to the effect of the decision of the Tribunal for the assessment year 2008-09 and the order of the CIT(A) for the assessment year 2009-10 which would be binding on the assessing officer. In fact, the assessing officer in his proceedings dated 05.06.2014 and 29.12.2014 has not even dealt with decisions. Before the Learned Writ Court, the assessee reiterated the contentions, which were raised in the objections dated 10.10.2014. The Learned Single Bench, after taking note of the contentions advanced by the assessee in paragraph no.34 of the impugned order, states that no doubt the appellant has raised a ground that the issue has also been considered in favour of the assessee by the Tribunal and CIT(A), with regard to the other grounds, the Learned Single Bench denies the relief to the assessee solely on the ground that the details have to be gone into elaborately for the purpose of appreciating the grounds raised by the assessee.

9. In our considered view, no such elaborate exercise would be required as on the understanding of the Assessing Officer itself, the issue has attained finality for the

assessment years 2008-09 and 2009-10 and this is precisely of the reason the Assessing Officer while disposing of the objections has not even touched upon the objections raised by the assessee to the reopening proceedings by relying upon the order of the ITAT and CIT(A) for the relevant assessment years.

10. That apart, we find from the reasons for reopening, there is not a whisper as to how the reopening was valid and as to whether the assessing officer has any tangible material to justify the reopening. That apart, the assessing officer has not pointed out any distinguishing factual feature to justify his exercise of power under Section 147 of the Act.

11. Thus, when the same kind of transaction for two assessment years has been examined and relief has been granted to the appellant-assessee and for the subsequent assessment year, the assessee has been granted the deduction under Section 10A/10AA even by the Assessing Officer himself, we are of the view that the issue is covered in favour of the assessee, in the light of the decision of the ITAT and CIT(A) and there is absolutely no justification to reopen the same.

12. Hence, the Writ Appeal is allowed and the order passed by this Court in W.P. No. 10051 of 2015 dated 02.08.2021 is set aside, and the writ petition is also allowed, and the proceedings impugned in the writ petition is quashed. Consequently, the connected Civil Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. Assistant Commissioner of Income Tax,
Large Tax Payer Unit-I,
1775, Jawaharlal Nehru Inner Ring Road,
Anna Nagar Western Extension,
Chennai - 600 101.

2. Commissioner of Income Tax,
   Large Tax Payer Unit-I,
   1775, Jawaharlal Nehru Inner Ring Road,
   Anna Nagar Western Extension,
   Chennai - 600 101.

+1cc to M/s.N.V.Balaji, Advocate Sr.48677
+1cc to M/s.A.P.Srinivas, Advocate Sr.48441

W.A. No. 2415 of 2021

smi[co]
srg 26/10/2021