

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2021

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MS.JUSTICE R.N.MANJULA

Judgment Reserved On 03.02.2021	Judgment Pronounced On 17.02.2021
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W.A.Nos.1133 & 1134 of 2020

and

W.P.Nos 5760&35246/2019

W.A.No.1133 of 2020 :-

M/s.Transsys Solutions Private Limited,
Rep., by its Directors, Mr.Venkata Krishnan S.,
Plot Super A 16-17, RR Tower IV, 8th Floor,
TVK Industrial Estate, Guindy,
Tamil Nadu-600 032. ... Appellant/Petitioner

-vs-

1.Assistant Commissioner of Income Tax,
Corporate Circle 3(1), Chennai,
Wanarpathy Block,
No.121, Mahathma Gandhi Road,
Nungambakkam, Chennai-600 034.

2.Assistant Commissioner of Income Tax,
TPO Circle 3(2), Chennai,
Income Tax Office, BSNL Tower,
No.16, Greams Road, Chennai-600 006 ..Respondents/Respondents

W.A.No.1134 of 2020 :-

M/s.Transsys Solutions Private Limited,
Rep., by its Directors,
Mr.Venkata Krishnan S.,
Plot Super A 16-17,

RR Tower IV, 8th Floor,
TVK Industrial Estate, Guindy,
Tamil Nadu-600 032.

.. Appellant/Petitioner

-vs-

1. Assistant Commissioner of Income Tax,
Corporate Circle 3(1), Chennai,
Wanarpathy Block,
No.121, Mahathma Gandhi Road,
Nungambakkam, Chennai-600 034.

2. Assistant Commissioner of Income Tax,
TPO Circle 3(2), Chennai,
Income Tax Office, BSNL Tower,
No.16, Greams Road, Chennai-600 006.

3. Deputy Commissioner of Income Tax,
Corporate Circle-3(2),
121, Nungambakkam High Road,
Chennai-600 034. ... Respondents/Respondents

Appeals under Clause 15 of the Letters Patent against
the common order dated 15.10.2020 made in W.P.Nos.5760 and
35246 of 2019 respectively.

Prayer in WP.5760 of 2019: Writ Petition filed under Article
226 of the Constitution of India praying Writ of Certiorari
calling for the records on the file of the Respondents in
ITBA/TPO/S/92CA/2018-19/1014398051(1) in issuing the notice
u/s. 92CA(2) and 92D(3) of the Income Tax Act dated
19.12.2018 by the 2nd Respondent for the Assessment Year 2016-
17, pursuant to the reference made by the 1st Respondent and
quash the same as illegal, arbitrary and bad in law.

Prayer in WP.35246 of 2019: Writ Petition filed under Article
226 of the Constitution of India praying Writ of Certiorari
calling for the records on the file of the 3rd Respondent in
Order No.ITBA/AST/F/144C/2019-20/1021197909(1) in passing the
Draft order u/s. 144C of the Income Tax Act dated 27.11.2019
by the 3rd Respondent for the Assessment Year 2016-17, and
quash the same as illegal, arbitrary and bad in law.

For Appellant : Mr.N.V.Balaji,
(In both Appeals) assisted by Ms.N.V.Lakshmi

For Respondents :Ms.Hema Muralikrishnan,
(In both Appeals) Senior Standing Counsel

COMMON JUDGMENT

T.S.Sivagnanam, J.

These appeals by the appellant/assessee are directed against the common order dated 15.10.2020, passed in W.P.Nos.5760 and 35246 of 2019 filed by the assessee.

2.W.P.No.5760 of 2019 was filed challenging the notice dated 19.12.2018, issued by the second respondent, the Transfer Pricing Officer (TPO), in exercise of his powers under Section 92CA(2) and Section 92D(3) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for the assessment year 2016-17.

3.W.P.No.35246 of 2019 was filed challenging the draft order under Section 144C of the Act passed by the Deputy Commissioner of Income Tax on 27.11.2019.

4.The appellant filed their return of income on 15.10.2016, for the assessment year under consideration, AY 2016-17. Notice dated 27.07.2017, was issued under Section 143(2) by the first respondent, the Assessing Officer, which mentions the issue, which has been identified for examination as to whether "value of international transactions is correctly shown in Form 3CEB and the return of income". Subsequently, the TPO issued notice dated 19.12.2018, stating that a reference has been received under Section 92CA(1) of the Act from the first respondent to determine the Arms Length Price (ALP) under Section 92CA(3) in respect of international transactions entered into by the appellant/assessee during the financial year 2015-16. The appellant was directed to produce evidence or material, which they may rely upon in support of computation made by them of ALP of the international transactions.

5.In paragraph 3 of the notice dated 19.12.2018, the list of information and documents, which the assessee was required to furnish/produce were mentioned. The assessee submitted their objection dated 03.01.2019, to the Assessing Officer through their Chartered Accountant, objecting for the reference made under Section 92CA(2) and Section 92D(3) to the TPO (second respondent) to determine the ALP. In the said objection, the appellant/assessee stated that the notice issued under Section 143(2) of the Act dated 27.07.2017, is for a limited scrutiny to identify as to whether the value of international transactions is correctly shown in Form 3CEB and return of income, whereas the notice issued by the TPO states that a reference has been received to determine the ALP under Section 92CA(3) in respect of international transactions entered into by the assessee during the financial year 2015-16. It was submitted that in terms of the reasons given in the Computer Aided Scrutiny Selection

(CASS), is for a limited scrutiny, it only requires reconciliation between Form 3CEB and return of income and it does not involve any TP risk parameters, which call for determination of ALP by reference to TPO. Therefore, it was submitted that the reference to the TPO for determination of ALP of international transactions, as done by the first respondent, is not authorized as per Instruction No.3 of 2016 dated 10.03.2016, issued by the Central Board of Direct Taxes (CBDT) and therefore, the consequent process of determination of ALP is also not in accordance with law and requested for withdrawal of the reference made to the TPO.

6.The assessee addressed the TPO through their Chartered Accountant by letter dated 03.01.2019, informing the TPO about their objection given to the first respondent questioning the reference to the TPO and without prejudice to the said objection, certain documents were forwarded. Subsequently, by letter dated 25.01.2019, the assessee furnished further details to the TPO. Subsequently, the assessee filed W.P.No.5760 of 2019 challenging the notice issued by the TPO dated 19.12.2018.

7.While entertaining the writ petition, the learned Single Bench granted a limited interim order dated 28.02.2019, after observing that the proceedings before the authority can continue, however, no orders shall be passed till the next hearing date. The writ petition was directed to be listed on 08.03.2019. The interim order was extended till 14.03.2019, by order dated 08.03.2019, and further extended till 29.03.2019, by order dated 14.03.2019. Subsequently, the interim order was not extended. The TPO has passed an order dated 31.10.2019, under Section 92CA (3) of the Act determining the ALP of the international transactions.

8.The Deputy Commissioner of Income Tax, Corporate Circle-3(2), Chennai, issued notice dated 25.11.2019, to the assessee informing them that they have received the order of the TPO dated 31.10.2019 and that the Department is not in possession of any order staying the proceedings as on the said date and if there is any order of stay granted in the assessee's case, the same may be communicated to the Department on or before 27.11.2019. In response to the said notice, the assessee by reply dated 27.11.2019, informed the Deputy Commissioner of Income Tax that when the writ petition was posted for hearing, for extension of stay, the learned Standing Counsel for the Department submitted that an assessment order was already passed for the assessment year 2016-17 and therefore, the writ petition (W.P.No.5760 of 2019) is infructuous.

9.Further, the assessee stated that their counsel objected to the passing of the assessment order, when the

writ petition was pending and that the Court adjourned the matter by a week to ascertain as to whether assessment order has been passed. A draft order under Section 144C of the Act was passed by the Deputy Commissioner of Income Tax on 27.11.2019. This order was challenged by the appellant in W.P.No.35246 of 2019.

10.The writ petition filed in W.P.No.5760 of 2019 challenging the notice dated 19.12.2019 was clubbed along with W.P.No.35246 of 2019 and both the writ petitions have been dismissed by a common order. This is how the assessee is before us by way of these appeals.

11.Before us, the assessee seeks to prosecute W.A.No.1134 of 2020, which has been filed challenging the dismissal of W.P.No.35246 of 2019. As stated above, the said writ petition was filed challenging the draft order under Section 144C of the Act dated 27.11.2019, passed by the Deputy Commissioner of Income Tax.

12.We have elaborately heard Mr.N.V.Balaji, learned counsel assisted by Ms.N.V.Lakshmi, learned counsel for the appellant/assessee and Ms.Hema Muralikrishnan, learned Senior Standing Counsel for the respondents/Revenue.

13.The argument of the learned counsel for the appellant is that the solitary issue, which was identified for examination in the limited scrutiny as per the notice issued under Section 143(2) of the Act dated 27.07.2017, is whether value of international transactions is correctly shown in Form 3CEB and return of income and that whether transactions reported are at arms length or not, was not the issue for which, the assessee's case was taken up for limited scrutiny. Further, the TPO could not have taken up for determination of the ALP of the international transactions firstly on the ground that the assessee's case was not selected for limited scrutiny on the said ground and secondly, it would be in violation of the instructions issued by the CBDT. Therefore, it is submitted that the reference to the TPO under Section 92CA(1) of the Act is wholly without jurisdiction.

14.Reverting back to the notice dated 27.07.2017, and referring to the reason for which the assessee's case was selected for limited scrutiny, it is submitted that in the counter affidavit filed in the writ petitions, the scope has been increased and this is impermissible in law. In this regard, the learned counsel referred to the decision in Mohinder Singh Gill & Anr. vs. The Chief Election Commissioner, New Delhi & Ors., [AIR 1978 SC 851]. Further, in response to the query raised by the Court qua, the finding rendered by the learned Single Bench in paragraph 13 of the impugned order that the assessee had cooperated and participated in the assessment proceedings and has also filed

objections to the draft order before the Dispute Resolution Panel (DRP), which is pending, as to how the appellant would be justified in prosecuting these appeals as already, the assessee is before the DRP raising all contentions. Mr.N.V.Balaji, would respond by referring to Section 144C(8) and submit that the issue raised in the writ petitions cannot be agitated before the DRP, nor adjudicated by the DRP and therefore, the assessee is justified in prosecuting these appeals. Therefore, it is submitted that the learned Single Bench ought to have granted the relief sought for in the writ petitions.

15.Ms.Hema Muralikrishnan, would submit that the understanding of the appellant/assessee is wholly incorrect and this has been clearly brought out in the counter affidavit filed in the writ petitions and it is not a case, where the Assessing Officer was denuded of jurisdiction to make a reference to the TPO. The learned Standing Counsel referred to the reasons given in the CASS selection and the assessee is not right in contending that the case was selected for limited scrutiny only. Further, the learned counsel referred to relevant paragraphs in the impugned order and submitted that the learned Writ Court rightly rejected the relief sought for.

16.In reply, Mr.N.V.Balaji while briefly reiterating the submissions made earlier, had referred to the directions issued by the CBDT in Instruction No.7/2014 dated 26.09.2014 and Instruction No.20/2015 dated 29.12.2015 and that information cannot be called for in a routine manner and a separate instruction has also been issued fixing monetary limits for selecting cases for scrutiny.

17.What is required to be considered in the instant case is whether the assessee is right in contending that the assessee's case was selected for a limited scrutiny and the reference to the TPO was beyond the scope of the scrutiny. In this regard, it would be relevant to see the reason and the issue for which, the assessee's case was selected for scrutiny, which is as hereunder:-

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Reason Code	Reason Description	Issue	Underlying Information Elements	Rationale
TP 01.04	Large Aggregate value of total employee cost in comparison to Aggregate value of international transactions as per books of accounts (T.P.Risk Parameter) (S.No.8 of Form 3CEB and Part A-P&L of ITR)	Whether value of international transactions are correctly shown in Form 3CEB and return of income.		

18. From the above, it is seen that the reason stated for selection of scrutiny was the large aggregate value of the total employee cost in comparison to aggregate value of international transactions as per books of accounts and TP risk parameters. The issue was whether the value of international transactions are correctly shown in Form 3CEB and return of income. If the above is the reason and issue for which the assessee's case was selected for scrutiny, can it be said that it is a case of a limited scrutiny. In our considered view, such narrow interpretation cannot be given to the case on hand.

19. As rightly contended by Ms. Hema Muralikrishnan, the first respondent is not competent to check whether the value of the international transactions as furnished in Form 3CEB by a Chartered Accountant and return of income is correctly shown. Further, the Assessing Officer, being not competent to examine the said issue, necessarily, the case has to be referred to the TPO as per Section 92CA of the Act. Therefore, we are of the view that the contention of the appellant/assessee that the case was selected for mere reconciliation is an incorrect interpretation. This is clear from the reason for which the case was selected for scrutiny and the issue arising there from. Thus, we find that there is no violation of the instructions issued by the CBDT.

20. In our considered view, the learned Single Bench rightly took note of these aspects as well as paragraph 3.4 of the CBDT Instruction No.15/2015, which states that the issue on which a reference was thought to be necessary, has to be explicitly mentioned in the Assessing Officer's letter seeking reference to the TPO and such letter of the Assessing

Officer dated 17.07.2018, was found to have complied with the said condition. The said letter is as follows:-

"PAN: AADCT4603N/2018-19

Dated: 17/07/2018

To

The Principal Commissioner of Income-tax,
Chennai-3,
Chennai.

THROUGH THE ADDL. CIT, CORPORATE RANGE-3, CHENNAI

Respected Sir,

\ Sub: Computation of Arms Length Price - Request
for approval - reference to Transfer Pricing
Officer (TPO) - in the following case - AY
2016-17 - Reg.

For the A.Y. 2016-17, the following scrutiny case has been selected for Limited scrutiny through CASS and notice u/s 143(2) was duly served on the assessee. On examination of Form 3CEBN in this case, it is observed that the assessee has entered into international transactions with its associated enterprises as mentioned below:

S.No.	Name of the Assessee	PAN	A.Y	CASS Reason
1	M/s.Trans sys Solutions Pvt. Ltd.	AADCT4603N	2016-17	(v) Large Aggregate value of total employee cost in comparison to aggregate value of International transactions as per books of accounts. (Form 3CEB)

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Name and address of the associated enterprise with whom the International transaction has been entered into.		Description of services provided/availed to/from the associated enterprise			Amount paid/received or payable/receivable for the services provided/taken.		Method used for determining the arm's length price [Sec section 92C(1)]
Name	Address	Type	Description	Type	As per Books Account	As computed by the assessee having regard to the arm's length price	Comparable uncontrolled price method
Transsys solutions FCZUAE	UAE	Provided to AE	Software solutions	Received/ Receivable	217203133	217203133	

2. In view of the above, it is considered necessary that a reference u/s. 92CA(1) be made to the Transfer Pricing Officer for determination of Arm's length Price for the said Transactions. As per Sec.92CA(1) of the IT Act, a reference to TPO could be made only with the prior approval of the Commissioner of Income-tax. Hence, it is requested that the necessary approval may kindly be granted for referring the case to the TPO.

3. Copies of Form 3CEB and CASS reasons screen shot in the above mentioned case are enclosed herewith for your kind reference."

21. Further, we also agree and endorse the finding rendered by the learned Single Bench that the reason for selection of scrutiny by CASS was only for numerical reconciliation is a over simplification of the reason stated for selection. In fact, the learned Single Bench has observed that the officer might have been more detailed in the choice of words employed so as to specifically refer to the issue of total employee cost, however, non-reference to this, is not fatal, as the reason for selection by CASS has been produced and placed on record by the officer while seeking approval of a Principal Commissioner of Income Tax (PCIT) for reference to the TPO.

22. Further, the Court noted that after the interim order, which was initially granted, was not extended, the Assessing Officer issued show cause notice dated 11.10.2019, the appellant/assessee submitted their reply dated 23.10.2019, enclosing various details on the computation of the ALP as sought for by the Assessing Officer. However, the

affidavit filed in support of the writ petitions was silent with regard to these facts. Thus, the learned Single Bench rightly concluded that the appellant has not only cooperated and participated in the conduct of assessment, but has also filed objections before the DRP that are pending disposal. Hence, we are of the considered view that the learned Single Bench rightly dismissed the writ petitions and the order does not call for any interference.

23.For the above reasons, W.A.No.1134 of 2020 is dismissed. Consequently, there is no merit in W.A.No.1133 of 2020.

24.In the result, the appeals are dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(V)

/TRUE COPY/

Sub-Assistant Registrar

abr
To

1.Assistant Commissioner of Income Tax,
Corporate Circle 3(1), Chennai,
Wanarpathy Block, No.121, Mahathma Gandhi Road,
Nungambakkam, Chennai-600 034.

2.Assistant Commissioner of Income Tax,
TPO Circle 3(2), Chennai,
Income Tax Office, BSNL Tower,
No.16, Greams Road, Chennai-600 006.

3.Deputy Commissioner of Income Tax,
Corporate Circle-3(2),
121, Nungambakkam High Road,
Chennai-600 034.

+1CC to M/s.Hema Murali Krishnan Advocate, SR.NO. No. 9322.

+2CCs to Mr.N.V.Balaji Advocate, SR.NO. No. 10020&10021.

Pre-delivery Judgment made in
W.A.Nos.1133 & 1134 of 2020

JP-II(CO)
NRA(17/03/2021)