IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2021

CORAM :

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Appeal No. 2821 of 2021
and
CMP Nos. 18820 & 18822 of 2021

M/s Dormakaba India Private Ltd
(Formerly known as Dorma India Private Ltd)
Rep. by its Authorised Signatory Mr Praveen Sarda
Mahindra World City
Plot No. 48/3, 8th Avenue
Anjur Village, Chengalpattu Taluk, Kancheepuram District
Tamil Nadu - 603 002, India
(cause title amended as per order made in
CMP No. 17159 of 2021 in
WA.SR.No.88822 of 2021) .. Appellant

Versus

1. Deputy Commissioner of Income Tax
Transfer Pricing Officer - 1(2)
Room No.319, 3rd Floor, Main Building
No.121, Mahatma Gandhi Road
Nungambakkam, Chennai - 600 034
Now at:
Deputy Commissioner of Income Tax
Transfer Pricing Officer - 1(2)
BSNL Tower, No.16, Greams Road
Chennai, Tamil Nadu - 600 006

2. The Joint Commissioner of Income Tax(OSD)
Corporate Circle - 1(1), Aayakar Bhavan
Room No.611, Wanarpathy Block
6th Floor, 121, Mahatma Gandhi Road
Nungambakkam
Chennai - 600 034 .. Respondents

Appeal filed under clause 15 of the Letters Patent against the order dated 09.08.2021 passed by this court in W.P. No. 18574 of 2016.

PRAYER in WP.No.18574 of 2016 : Writ Petition filed Under Article 226 of the Constitution of India to issue of Writ of Certiorari, calling for the records in PAN No.AAACD3980D/DC-Co.C-1(1) dated 06.04.2016 on the file of the 2nd respondent relating to Assessment Years 2006-07, 2007-2008 and 2008-09, quash the same.

PRAYER IN WP.NO.18574 OF 2016:

For Appellant : Mr.N.V.Balaji
For Respondents : Mr.Prabhu Mukunth Arun Kumar

J U D G M E N T
(Judgment of the Court was delivered by R. MAHADEVAN, J.)

This appeal arises from the order of this court dated 09.08.2021 passed in W.P. No. 18574 of 2016.

2. The writ petitioner is the appellant herein. They preferred the said writ petition, challenging the notice dated 06.04.2016 issued by the second respondent relating to the Assessment Years 2006-2007, 2007-08 and 2008-09, on the ground that the same was issued beyond the period of limitation as contemplated under 4th Proviso to Section 153 (2A) of The Income Tax Act. According to the appellant, the time limit for passing the assessment order in view of section 153(2A) expired on 31.03.2016, whereas the notice impugned herein was issued on 06.04.2016, which is barred by limitation and hence, the same is liable to be quashed on the ground of limitation.

3. The learned single judge was of the view that what was challenged by the appellant is only a notice and not a final order passed against them and that, the ground of limitation requires an adjudication, as verification of original records are essential for reckoning the period of limitation. After holding so, the learned single judge disposed of the writ petition directing the respondents to consider the objections filed by the appellant on 27.04.2016 and decide the ground of limitation as a preliminary issue and thereafter, pass final orders on merits and in accordance with law, after affording opportunity to the appellant, within a period of eight weeks. Aggrieved over the order so passed in the writ petition, the appellant has come up with this writ appeal.

4. The learned counsel for the appellant would contend that the notice dated 06.04.2016 was issued beyond the period of limitation as contemplated under the 4th Proviso to Section

153(2A) of the Act. It is his further contention that when the issue regarding limitation is a legal issue, it has to be determined by this court, whereas the learned Judge erred in remitting the matter back to the respondent authorities for fresh consideration. It is also contended that the assessment proceedings was completed by the Transfer Pricing Officer under Section 92CA on 27.01.2016 and 28.01.2016 and therefore, the notice, if any, ought to have been issued by the second respondent on or before 31.03.2016, however, it was issued only on 06.04.2016, which is admittedly, barred by limitation. Thus, according to the learned counsel, any further assessment proceedings pursuant to the notice dated 06.04.2016, is arbitrary, illegal and contrary to law.

5.On the above contentions, we have heard the learned counsel for the respondents and also perused the materials available on record.

6. Concededly, the challenge made in the writ petition is only to the notice dated 06.04.2016 issued by the second respondent, which according to the appellant, is time barred one. The appellant has also filed its objections to the said notice on 27.04.2016 and thereafter, approached this court under Article 226 of the Constitution of India by filing WP.No.18574 of 2016 to quash the said notice. The learned single Judge, upon hearing the counsel for both sides, observed that the ground of limitation raised by the appellant has to be decided based on the records and the respondents are bound to decide the same as a preliminary issue and thereafter, proceed further, if the impugned notice was issued within the period of limitation; if the notice was issued beyond the period of limitation, then, all further proceedings are to be dropped. Accordingly, the learned single judge disposed of the writ petition, directing the respondents to consider the objections filed by the appellant and pass final order, after deciding the issue relating to limitation, as a first instance, on merits and in accordance with law. Such a conclusion reached by the learned single Judge, in our opinion, does not require any interference.

7.1 At this stage, the learned counsel for the appellant would make an appeal to this court that the appellant may be granted liberty to place additional particulars before the second respondent to substantiate their contention. It is also reported by the learned counsel that the second respondent has already directed the appellant to appear for an enquiry on 18.11.2021 i.e., today and therefore, the appellant may be permitted to file additional particulars within a period of two weeks and the second respondent may be directed to consider the same, without reference to the non-appearance of the appellant for personal hearing scheduled to be held today.

7.2 There is no serious objection on the side of the respondents for granting such relief to the appellant.

8. In the given factual matrix, considering the submissions now made by the learned counsel on either side, we grant liberty to the appellant to produce all the material particulars available to them, to the second respondent, within a period of two weeks from the date of receipt of a copy of this judgment. On such production, the second respondent shall consider it along with the objections already filed by the appellant to the notice dated 06.04.2016, without reference to the absence of the appellant for the hearing and pass orders, on merits and in accordance with law, as expeditiously as possible.

9. Accordingly, this writ Appeal stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

dhk/rsh

To

1.Deputy Commissioner of Income Tax
Transfer Pricing Officer - 1(2)
BSNL Tower, No.16, Greams Road
Chennai, Tamil Nadu - 600 006

2. The Joint Commissioner of Income Tax(OSD)
Corporate Circle - 1(1), Aayakar Bhavan
Room No.611, Wanarpathy Block
6th Floor, 121, Mahatma Gandhi Road
Nungambakkam, Chennai - 600 034

+1cc to Mr.N.V.Balaji, Advocate SR.No.60169

W.A. No. 2821 of 2021

KSM(CO)
GN(21/01/2022)