IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2021

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

W.P.No.23028 of 2021
and
W.M.P.No.24223 of 2021

M/s.BASF Catalysts India Private Limited,
Represented by its Managing Director
Mr.Anil Kumar Choudhary
P.No.8/1, Veerapuram Village,
Mahindra World City,
Chengelpet Taluk,
Kancheepuram-603 002,
Tamil Nadu, India. ...Petitioner

-Vs.-

1. The Additional / Joint / Deputy / Assistant Commissione of Income Tax / Income-tax Officer ["AO"]
National e-Assessment Centre,
Delhi.

2. Deputy Commissioner of Income Tax,
Corporate Circle 1(2),
121, Mahatma Gandhi Road,
Chennai. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records on the file of the first respondent and quash the impugned order in No.ITBA/AST/F/144C/2021-22/1035979832(1) dated 28.09.2021 passed by the first respondent under Section 144C of the Income Tax Act 1961, as illegal.

For Petitioner : Ms.N.V.Lakshmi

For Respondents : Ms.Hema Muralikrishnan
Senior standing counsel
for Income Tax

O R D E R

Captioned main writ petition has been filed assailing a draft order under Section 144C of 'The Income-tax Act, 1961 (43 of 1961)' [hereinafter 'IT Act' for the sake of brevity] being 'draft order dated 28.09.2021 bearing reference DIN & Order No: ITBA/AST/F/144C/2021-22/1035979832(1)' [hereinafter 'impugned order' for the sake of convenience and clarity].

2. Ms.N.V.Lakshmi, learned counsel on record for writ petitioner-assessee, submits that the impugned order was preceded by a 'show cause notice dated 25.09.2021 bearing reference DIN: ITBA/AST/F/143(3)(SCN)/2021-22/1035883541(1)' [hereinafter 'said SCN' for the sake of convenience and clarity]. To be noted, though said SCN is a notice to show cause, it also contains draft assessment order wherein variations proposed have been set out.

3. Be that as it may, said SCN has been digitally signed on 25.09.2021 at 12:38:01 IST. Assuming, it was uploaded immediately after being digitally signed, it was obviously uploaded well past noon of 25.09.2021. Paragraph No.3 of said SCN reads as follows:

> '3. Kindly submit your response through your registered e-filing account at www.incometax.gov.in by 23:59 hours of 27.09.2021, whereby you may either:-'

4. Learned counsel submits that 25.09.2021 was Saturday, obviously, 26.09.2021 was Sunday which was a holiday and writ petitioner-assessee was left with only one day namely, Monday 27.09.2021 and writ petitioner-assessee noticed the said SCN only on Monday. However, the writ petitioner-assessee sent their objections qua draft assessment order on 28.09.2021. This is at page Nos.67 to 69 of the typed set of papers. A scanned reproduction of objections of writ petitioner-assessee dated 28.09.2021 is as follows:

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BASF
We create chemistry

September 28, 2021

To

Additional / Joint / Deputy / Assistant Commissioner of Income-tax / Income-tax Officer,
National Faceless Assessment Centre
Delhi

And

Deputy Commissioner of Income-tax
Corporate Circle 1(2)
121, Mahatma Gandhi Road
Chennai - 600034

Dear Sirs,

Name of the Assessee	BASF Catalysts India Private Limited ('the Company' or 'BASF India')
PAN	AAACE[illegible]
Assessment Year ('AY')	2017-18
Subject	Response to the notice under sub-section (1) of Section 142 of the Income Tax Act, 1961
Reference	i. Notice u/s. 142(1) with DIN No. ITBA/AST/F/142(1)/2021-22/[illegible](1) dt. 08-Sep-2021 ii. Notice u/s. 142(1) with DIN No. ITBA/AST/F/142(1)/2021-22/[illegible](1) dt. 07-Sep-2021 iii. Notice u/s. 142(1) with DIN No. ITBA/AST/F/142(1)/2020-21/[illegible](1) dt. 06-Jan-2021 iv. Our reply letter dt. 13-Jan-2021 v. Our reply letter dt. 14-Sep-2021 vi. Show Cause Notice (SCN) with DIN No. ITBA/AST/F/143(3)(SCN)/2021-22/[illegible](1) dt. 25-Sep-2021

We refer to the above notices and SCN (refer *Annexure 1*) from the Additional / Joint / Deputy / Assistant Commissioner of Income-tax, National Faceless Assessment Centre ('AO NFAC') to which we provide the submissions as given below.

A. Large "any other amount allowable as deduction" claimed in Schedule BP of return - INR 3,49,28,539/-

We wish to submit that we have given the split-up of INR 3,49,28,539/- and details of each of deductions in our earlier reply letter dated 14-Sep-2021 (refer *Annexure 2*). However, we notice that your good office has not considered our submissions and decided to disallow the entire deduction claimed. The acknowledgement of our previous submission is enclosed as *Annexure 3*. We request the same be considered and amend the draft assessment order.

D. Verification of Duty Drawback received as shown in the Export Import Data – INR 4,32,79,672/-

We wish to submit to your good office that we have disclosed the income from duty drawback in our return of income under "EXPORT INCENTIVES" under "Part A-P & L – Ind AS". Therefore, the profit considered also includes the income from duty drawback in our return of income (the extract is enclosed as Annexure 4). We therefore humbly submit that there is no escapement of income and tax and thus, not to consider the same while passing the draft assessment order.

C. Other additions

i. Donation paid to ECMA – INR 2,50,000/-

We submit to your good office that documents relating to donations were submitted along with our reply letter dt. 15-Jan-2021, which inter alia includes an Order u/s. 80G(5)(vi) of The Income Tax Act, 1961 from the Office of The Director of Income Tax (E). The same substantiates the recognition of Donee satisfying the requirements of S. 80G. We therefore humbly submit the contention be dropped and amend the draft assessment order.

ii. Deduction u/s. 80JJAA – INR 5,78,727/-

We wish to explain the good office that the provision of S. 80JJAA inter alia states "… be allowed a deduction of an amount equal to thirty per cent of additional employee cost incurred in the course of such business in the previous year, for three assessment years including the assessment year relevant to the previous year in which such employment is provided…". Therefore, any additional employee cost shall be claimed for a three year period, which in our case was the second year. The annexure on Form No. 10DA we had shared also mentions that fact. We therefore request your good office to drop the contention and amend the draft assessment order.

iii. Remission of liability for an amount of INR 2,98,45,649/-

We wish to state the good office that the above item has been included as a part of our return of income under "PROVISION NO LONGER REQUIRED WRITTEN BACK" under "Other income" under "Part A-P & L – Ind AS" (the extract is enclosed as Annexure 5). Therefore, the profit considered also includes the income from remission of liability in our return. We therefore humbly submit that there is no escapement of tax and thus, not to consider the same while passing the draft assessment order.

iv. Reversal / utilisation of inventory provision – INR 1,55,42,203/-

We submit to your good office that, the above relates to a reversal of inventory provision for the Assessment Year. The detail of which we have submitted along with our reply letter dated 14-Sep-2021. We wish to state that this has already been considered in the discussion point A above and is therefore considered in duplicity by the good office. We therefore request the same be dropped and amend the draft assessment order.

v. Reversal/ utilisation of long service award

We submit to your good office that details on the above contention has already been shared by us vide our letter dated 14-Sep-2021. Request the same be considered and the contention dropped while amending the draft assessment order.

xii. Merger expenditure of INR 38,92,650/-

We submit to your good office that we have already submitted the relevant documents through our letter dated 14-Sep-2021. Request the same be considered and the contention dropped while amending the draft assessment order.

This letter is addressed to AO NFAC and the office of the Deputy Commissioner of Income-tax, Corporate Circle 1(2), being the jurisdictional officer of us.

We request the AO NFAC and the good office of the Deputy Commissioner of Income-tax, Corporate Circle 1(2) take the above letter on record and accede to our request. We shall be pleased to provide any further clarifications in the matter.

Yours faithfully,

For BASF Catalysts India Private Limited

Authorised Signatory

5. Therefore, the short point that has been raised by learned counsel for writ petitioner-assessee is, inadequate time for responding to said SCN and impugned order being made post objections by saying that writ petitioner-assessee has not filed any reply.

6. Ms.Hema Muralikrishnan, learned senior standing counsel for Income-tax accepts notice on behalf of both the respondents. Learned Revenue counsel pointed out that the writ petitioner-assessee was able to send a reply on 28.09.2021, it could have as well sent a communication on 27.09.2021 requesting for some more time. It was also submitted by learned Revenue counsel that the impugned order is a draft order under Section 144C of IT Act and therefore, objections can even be construed as objections to the draft.

7. Owing to the short point on which the captioned writ petition turns, with consent of learned counsel on both sides, main writ petition was taken up.

8. With regard to the submission that communication could have been sent on 27.09.2021 requesting for time, it may not be necessary to go into that aspect of the matter in this case, as the impugned order has been made on the basis that the writ petitioner-assessee has not responded. This means that the response of the writ petitioner-assessee sent on 28.09.2021 has

not been taken into account in making the impugned order. As far as the objections of writ petitioner-assessee dated 28.09.2021 being considered as objections to draft order is concerned, if the objections to said SCN are considered as it inter alia pertains to proposed additions, there is every possibility of draft order being different. It is made clear that this Court has not expressed any opinion or view on this aspect of the matter and this Court is only setting out the position that when an assessee's objections to SCN are considered, owing to the objections, there can be a change in the draft order, more so when it pertains to proposed additions. Therefore, in the facts and circumstances of the case on hand, it cannot be gainsaid that the objections of writ petitioner-assessee qua said SCN can be considered as objections to draft order.

9. This Court carefully considered the rival contentions and also took into account requirements to balance rights and contentions of assessee as well as Revenue. In this view of matter, this Court deems it appropriate to set aside the impugned order without expressing any opinion on merits and directing the Revenue to proceed from the said SCN stage and complete the assessment as expeditiously as possible. To articulate little more on this, this will protect the interest of Revenue and it will also douse the anxiety of the assessee qua uncertainty. It is in this context that this Court has made observations supra regarding balancing rights of Revenue and writ petitioner-assessee being preserved. Therefore, captioned writ petition is disposed of by making the following order:

(a) Impugned order being order dated 28.09.2021 bearing reference DIN & Order No: ITBA/AST/F/144C/2021-22/1035979832(1) is set aside solely on the ground that writ petitioner-assessee's objections to 25.09.2021 SCN (given on 28.09.2021) has not been considered;

(b) The twin limb qua previous direction is, this Court has not expressed any view or opinion on the merits of the matter;

(c) The respondent shall now proceed from the said SCN stage i.e., SCN dated 25.09.2021 bearing reference DIN: ITBA/AST/F/143(3)(SCN)/2021-22/1035883541(1) qua assessment year 2018-19, considering the response of writ petitioner-assessee (at page Nos.67 to 69 of the typed set of papers) and complete the legal drill of assessment as expeditiously as the business of the respondent would permit and in any event within six weeks from today i.e., on or before 07.12.2021;

10. Captioned main Writ Petition is disposed of with the

aforementioned directives. Consequently, captioned writ miscellaneous petition is also disposed of as closed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

nsa/mk

To

1. The Additional / Joint / Deputy / Assistant Commissioner
   of Income Tax / Income-tax Officer ["AO"]
   National e-Assessment Centre,
   Delhi.

2. Deputy Commissioner of Income Tax,
   Corporate Circle 1(2),
   121, Mahatma Gandhi Road,
   Chennai.

+1cc to Ms.Hema Muralikrishnan, Advocate, S.R.No.54994

+1cc to Mr.N.V.Balaji, Advocate, S.R.No.55470

W.P.No.23028 of 2021
and
W.M.P.No.24223 of 2021

AK-II(CO)
RGA(29/11/2021)