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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.06.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.4534 of 2017

and

W.M.P.No.4766 of 2017

M/s.Bharat Technology Auto Components Limited,
Represented by Director, Mr.M.R.Sivakumar,
Unit 708, Beta Wing, 7th Floor, Raheja Towers,
177, Anna Salai, Chennai-600 002.

..Petitioner

-vs-

1. The Central Board of Direct Taxes,
Department of Revenue,
6th Floor, Mayur Bhavan,
Connaught Place,
New Delhi.

2. The Income Tax Officer,
Corporate Ward - 1(1),
121, Mahatma Gandhi Road,
Chennai-600 034.

..Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the first respondent herein to grant reliefs to the petitioner-Company as envisaged in para 8.3(a) of the Sanctioned Scheme of the Board for Industrial and Financial Reconstruction (BIFR), vide order dated 14.01.2004 as amended vide corrigendum dated 02.04.2004 and 14.05.2004.

For Petitioner : Mr.R.Sivaraman

For Respondents : Ms.Hema Muralikrishnan,
Senior Standing Counsel
for Income Tax

O R D E R

The relief sought for in the present writ petition is to direct the first respondent herein to grant reliefs to the petitioner-Company as envisaged in para 8.3(a) of the Sanctioned



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9.The BIFR more specifically, passed further orders on 01.08.2014. Para 8 of the said order reads as follows:-

"8.Having considered the prayers made in the MA, submissions made by the company, reply of Income Tax Department, rejoinder filed by the company and the argument of both the parties and the material available on record, the Bench reiterates its earlier direction given under para 8.3(a) of SS-04 as under:-
To Consider:-

i) To grant exemption under Section 72A(2) of Income Tax Act, 1961 to UCAL Division of BTACL (UDB) to enable it to carry forward the accumulated business losses and unabsorbed depreciation of UPSL.

ii) To exempt the company from the provisions of Section 41(1) and 43B of Income Tax Act, 1961 in respect of the reliefs and concessions to be availed of by UPSL.

iii) To exempt the company from applicability of payment of Minimum Alternative Tax (MAT) u/s 115JB, 115JAA of the Income Tax Act, 1961 till the accumulated losses are wiped out.

iv) To exempt the company from the provisions of Section 80 read with Section 139 of Income Tax Act, 1961."

10.Since, the petitioner could not able to get any relief, filed subsequent petition in M.A.No.464 of 2014 to re-adjudicate the issues and the said application is pending.

11.The learned Senior Standing Counsel appearing on behalf of the respondents reiterated that in view of the directions issued by the BIFR to consider the issue, the first respondent had considered the same and rejected the claim made by the petitioner-Company. Once the claim was rejected by the first respondent competent authority, there cannot be any further question of reconsideration on the very same issue. To substantiate the contentions, the learned Senior Standing Counsel referred to the contentions raised by the first respondent in paragraphs 5 and 6 of the counter affidavit which read as under:-

"5.It is submitted that the petitioner company did not approach the Respondent No.1 for



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the income tax reliefs envisaged in para 8.3 of SS-04. On the contrary, the petitioner company filed its return of income for the AY 2003-04 to AY 2006-07 claiming the reliefs including the benefit u/s 72A of Income Tax Act relating to availing the unabsorbed losses and unabsorbed depreciation of M/s UCAL Power Systems Ltd (UPSL) available to M/s UPSL as on 01.07.2002. The AO also allowed the benefit u/s 72A of Income Tax Act to the petitioner company M/s Bharat Technologies Auto Components Ltd (BTACL). The AO at Chennai had no jurisdiction to allow any income tax relief which fall under the jurisdiction of the Respondent No.1 CBDT (Pr. Director General of Income Tax) (Admn. & TPS). As soon as the Respondent No. came to know about the benefit u/s 72A of Income Tax Act granted by the AO, Chennai to petitioner Company BTACL, the Respondent No.1 passed order dated 03.02.2010 disagreeing with the benefits availed by the petitioner company u/s 72A of Income Tax Act and rejected the grant of benefit u/s 72A of Income Tax Act on the grounds mentioned in the said letter dated 03.02.2010, a copy of the same is filed in the typed set of papers filed by this respondent.

6.It is submitted that on the basis of rejection of relief by the Respondent No.1, the Commissioner of Income Tax directed the AO to reopen the assessments from the AY 2003-04 to 2006-07 in exercise of powers available u/s 263 of Income Tax Act 1961. Accordingly the AO reopened the assessments of the company for the above assessment years. The petitioner company approached this Hon'ble Court against action of the AO for reopening the assessments vide W.P.No.28924/10 and this Hon'ble Court granted interim stay vide its order dated 24.01.2011. However thereafter the petitioner company withdrew its petition on 30.01.2014 on the ground that it would pursue its relief by filing MA before BIFR keeping in view the Hon'ble Delhi High Court's order dated 13.07.2012 passed in WP (C) No.4163/2012 in the case of M/s Orient Vegetax Pro Ltd. This Hon'ble Court allowed petitioner company's request to withdraw its petition. Accordingly the petitioner company filed MA No.171/2014 dated 26.02.2014 before the BIFR seeking direction to the 1st respondent



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herein to grant reliefs to the petitioner as envisaged in para 8.3 of SS-04 and also to maintain status quo and not to take any coercive action till the disposal of the MA No.171/2014. The 1st respondent herein also filed its written reply dated 28.03.2014. The petitioner-company also filed its rejoinder on 29.05.2014. After completion of the pleadings, the BIFR heard the matter on 31.03.2014 and 07.07.2014."

12.At the out set, it is contended that the original order passed by the first respondent in proceedings dated 03.02.2010 became final and no relief was recommended to be given to the petitioner and thereafter, the earlier writ petition filed by the petitioner had also been withdrawn. The petitioner approached the BIFR and the BIFR also passed an order and therefore, the claim set out by the petitioner was rejected by the first respondent as well as by the BIFR. Under these circumstances, the relief sought for by the petitioner-Company to direct the first respondent to grant the very same relief cannot be considered in view of the fact that the first respondent and the BIFR had already considered the facts and circumstances and not granted the relief in favour of the petitioner. Those orders became final and the further miscellaneous application even before the BIFR is not entertained. Admittedly, the rejection orders are not under challenge in the present writ petition.

13.Contrarily, the relief sought for in the present writ petition is to grant relief to the petitioner-Company as envisaged in para 8.3(a) of Sanctioned Scheme of the BIFR vide order dated 14.01.2004 as amended vide corrigendum dated 02.04.2004 and 14.05.2004.

14.Under these circumstances, this Court cannot direct the first respondent to grant the relief as such sought for in the present writ petition in view of the fact that the first respondent has already considered and passed orders and those orders are not under challenge and the earlier writ petition filed by the writ petitioner was also withdrawn.

15.This apart, the first respondent, pursuant to the directions of the BIFR had already considered the issues and passed an order rejecting the same. Once again directing the first respondent to grant the relief does not arise at all. The judgments cited on behalf of the petitioner are of no avail in view of the fact that the facts in respect of the present writ petition are entirely different and further, the case of the petitioner was already considered by the first respondent and the BIFR and orders were passed. Thus, those judgments cannot



have any implication with reference to the facts and circumstances of the case on hand. Thus, the petitioner has not made any ground so as to consider the relief as such sought for in the present writ petition.

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16. With the above observations, this writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

svn/abr

To

1. The Central Board of Direct Taxes,
Department of Revenue,
6th Floor, Mayur Bhavan,
Connaught Place,
New Delhi.
2. The Income Tax Officer,
Corporate Ward - 1, (1),
121 Mahatma Gandhi Road,
Chennai-600 034.

+1cc to M/s. Hema Muralikrishnan, Advocate, S.R.No.27879/21

WP No.4534 of 2017

RLD (CO)

RGA (29/07/2021)