



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.04.2021
PRONOUNCED ON : 27.05.2021

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.25583 and 25584 of 2017 &
W.M.P.Nos.26975 and 26976 of 2017 & 20188 of 2019

M/s Volex Interconnect (India) Private Limited
No.22/1-A, First Street, Kazura Gardens,
Neelankarai
Chennai - 600 041, TN.

r.. Petitioner in
both the W.P's.

vs.

The Office of the Assistant Commissioner of Income Tax
Corporate Circle 3(2), Chennai - 34.
IV Floor, New Block, 121, MG Road
Nungambakkam, Chennai - 600 034, TN.

.. Respondent in
both the W.P's.

Common Prayer: Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorari to call for the records of the respondent and quash the impugned order/proceeding of the respondent herein bearing P.A. AAACW4483G/2010-11 and 2011-12 dated 06.03.2017 with regard to the petitioner company on the file of the respondent herein.

For Petitioner : Mr.Vaibhav R Venkatesh
(in both the W.P's.)

For Respondent : M/s.Hema Murali Krishnan
Sr.Standing Counsel
(in both the W.P's.)

C O M M O N O R D E R

A short point that arises for consideration in these writ petitions is whether the respondent Assessing Officer was justified in passing the impugned orders dated 6.3.2017 before passing a Draft Assessment Order under section 143(3) read with Section 92CA (4) and Section 144C (1) of the Income Tax Act, 1961.



2. Earlier by an order dated 24.8.2016, the Income Tax Appellate Tribunal had allowed the appeal filed by the respondent in I.T.A.Nos 952/Mds of 2015 and I.T.A.No740/Mds 2016 for the Assessment Years years 2010-11 and 2011-12 with the following observations:-

"7. We have heard both the parties and perused the material on record. The main issue for consideration is whether the CUP method to be followed or TNMM to be followed to determine the ALP of assessee's case. This was considered by the Tribunal in the case of M/s Knorr Bremsc India Pvt. Ltd. Vs. ACIT vide order dated 31.10.2012, wherein held that:-

"9. The appellant has also assailed the addition made on account of international transactions (Rs.1,52,07,206/- towards professional consultancy and Rs.1,40,56,800/- towards management fee for support services), by determining Nil value as the ALP. The TPO found that these services provided by the AE are very general in nature and such a support is expected from AU even without payment of any such charge. The assessee argued that the authorities below are stated to have acted beyond their jurisdiction in touching upon the commercial expediency of the transactions. The DRP, however, has found that Emails brought on record merely justify presence of Ms. Rita Ricken as team leader of sales logistics, which is only an effort to justify her presence. She in fact is safeguarding group interest shareholder interest. The TPO has analysed each service and benefit received by assessee in detail. No cost allocation key has been furnished to the DRP either which confirmed the addition made for both such services claimed by the assessee.

9.1. The appellant's contention that TPO is no authority to judge the allowability of the business expenditure is a correct proposition of law in view of the decision rendered by the Hon'ble Delhi High Court in its order dated 29th March 2012 in the case of EKL Appliances Ltd., (ITA Nos.1068/2011 & 1070/2011). The Hon'ble High Court in para judgment has ruled as under:-

"Whether or not to enter into the transaction is for the assessee to decide. The quantum of expenditure can no doubt be examined by the TPO as per law but in judging the allowability thereof as business expenditure, he has no authority to disallow the entire expenditure or a part thereof



9.2. After hearing the parties with reference to material on record, we find that the authorities below have not conclusively held that the assessee could not enter into such a transaction nor had they disallowed the same by holding that such an expenditure is not assessee's business expenditure. The DRP as well as the authorities below have merely elucidated that the payments are reimbursement in respect of Ms. Rita Ricken and other personnel's case to serve the interest of share holders. By saying so they have only described the circumstance under which the international transaction has been entered by the appellant, so as to test the benefit that can be said to have reached the assessee. It, therefore, cannot be said to have questioned the commercial expediency of such transactions entered by the appellant. The I.T. Rules contain exhaustive detail regarding nature of information and documents which are required to be maintained by the assessee. Rule 10D(1) of the I.T. Rules, 1962 also mandates the maintainability of record of uncontrolled transactions to be taken into account in analysing the comparability of the international functions entered into by the assessee. It, therefore, is obligatory on part of the appellant to maintain such record and produce the same before the TPO to show that it has benchmarked the international transaction at ALP. This obligation, however, has not been discharged by the assessee.



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9.3. The appellant in the present case is also not shown to be willing to pay any amount for such services, if it were, so provided by an independent enterprise or if the same would have been performed in house. The DRP is found to have considered these services as non-beneficial for the recipient and did not take it as chargeable services. The perusal of e-mails and other contemporaneous record only goes to reveal that incidental and passive association benefit has been provided by the associate enterprise. In this view of the matter there could neither be any cost contribution or cost reimbursement nor payment for such services to the AE. The TPO, therefore, has rightly adopted Nil value for benchmarking the arm's length price in respect of both these services. We, therefore, do not find any reason to interfere with the well reasoned conclusion reached by the AO on this count. The grounds raised in appeal in this respect, therefore, stand rejected."

7.1. However, this was the subject matter of litigation before the Hon'ble Delhi High Court wherein held that:-

"54. This brings us to the appeal filed by the Revenue-respondent in ITA No.182 of 2013. The Revenue is aggrieved by the decision of the Tribunal directing the Assessing Officer to delete the addition with respect to the SAP consultancy charges in the sum of Rs.2,68,93,871/- to the assessee's income. The Tribunal found that the Dispute Resolution Panel had recorded a finding that the SAP licence and MS Office had been purchased at a lower rate and to that extent the benefit test for the recipient is clear and the assessee must be given the benefit. The Tribunal further noted that in the same breath the Dispute Resolution Panel upheld the conclusion of the Transfer Pricing Officer. The Tribunal held that since the Dispute Resolution Panel had reached a finding that the SAP licence and MS Office had been purchased at a lower rate and had benefited the assessee, it was not proper to uphold the conclusion of the Transfer Pricing Officer for adding the said amount to the assessee's income. The Tribunal held that the assessee had discharged the onus that the international transactions had been benchmarked at an arm's length price in respect of the SAP licence and, accordingly, directed the Assessing Officer to delete the



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addition.

55. Had the matter rested only on the question of appreciation of facts, we would not have and indeed could not have interfered in appeal. However, in view of our finding on the questions of law in the assessee's appeal, it would be necessary for the authorities to consider this matter afresh in the light of those observations as well. It would be necessary upon remand for the authorities under the Act to consider whether the transactions ought to be separately benchmarked or whether the transactional net margin method ought to be adopted in respect of the same as well."

In view of the above findings of the Hon'ble Delhi High Court, we remit the issue to the file of T.P.O. For her consideration in the light of above judgment."

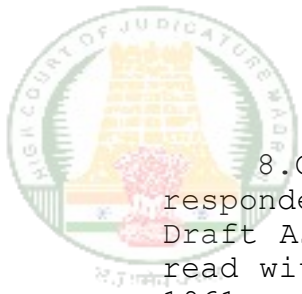
3. These appeals were filed by the respondent against Final Assessment Orders dated 25.2.2015 for the assessment years 2010-11 and 2011-12 passed by the respondent.

4. Earlier, Transfer Pricing Order dated 28.01.2014 was passed by the Transfer Pricing Officer, pursuant to a reference under Section 92 CA (1) of the Income Tax Act, 1961 for the assessment year 2010-11. Pursuant to the aforesaid orders of the Transfer Pricing Officer, the respondent herein passed a Draft Assessment Orders dated 13.03.2014 for the aforesaid assessment years 2010-11 under Section 144 C (1) of the IT Act, 1961.

5. Under these circumstances, the petitioner approached the Dispute Resolution Panel under section 144C of the Income Tax Act, 1961 with its objection. The Dispute Resolution Panel thereafter passed an order/direction dated 24.12.2014 under Section 144C of the IT Act, 1961.

6. Pursuant to the aforesaid order of the Dispute Resolution Panel, an order to give effect to the aforesaid order was passed by the respondent on 5.2.2015 and an Assessment Order 25.02.2015 by the respondents herein.

7. Aggrieved by the Assessment Orders dated 25.02.2015 of the respondent herein, the respondent filed I.T.A.Nos 952/Mds of 2015 and I.T.A.No740/Mds 2016 which came to be disposed by an order dated 24.8.2016, for the three Assessment years the operative of which has been reproduced above. In pursuant to the above order, the respondent has passed the impugned order dated 06.03.2017 for AY 2010-11 and A Y 2011-12 without passing Draft Assessment Orders.



8. On behalf of the petitioner, the submitted that the respondent erred in passing the impugned order without passing Draft Assessment Orders as is contemplated under section 143(3) read with Section 92 CA (4) and 144 C (1) of the Income Tax Act, 1961.

9. It is submitted that by directly passing the impugned assessment orders before passing a Draft Assessment Order, the respondent has attempted to deny the right of the petitioner approach the Dispute Resolution Panel under section 144C of the Income Tax Act, 1961.

10. The learned counsel for the petitioner submits that the issue is squarely covered by the decision of the Division Bench of this Court in the Assistant Commissioner of Income Tax and Another Vs. Vijay Television Private Limited and Another, in W.P.Nos.1327 to 1329 of 2014, dated 23.04.2018.

The learned counsel for the petitioner further submits that this issue is also covered by the following decisions:-

- i. Turner International India Private Limited Vs. Deputy Commissioner of Income Tax Circle 25(2), 2017 SCC OnLine Del 8441 : (2017) 297 CTR 460.
- ii. JCB India Ltd. Vs. Deputy Commissioner of Income Tax and Another, 2017 SCC OnLine Del 10424 : (2017) 398 ITR 189.
- iii. Nokia India Private Limited Vs. Additional Commissioner of Income Tax, Judgment dated 07.09.2017, passed by the Delhi High Court in W.P. (C) No.3629 of 2017.
- iv. Additional Commissioner of Income Tax Vs. M/s. Nokia India Private Ltd., Order dated 14.05.2018, passed by the Hon'ble Supreme Court in S.L.P. (Civil) Diary No.7302 of 2018.
- v. Deputy Commissioner of Income Tax Vs. JCB India Ltd., Order dated 12.10.2018, passed by the Hon'ble Supreme Court in S.P.L.(Civil) Diary No.24312 of 2018.

11. Defending impugned order, learned counsel for the respondent, Income Tax Department submits that the Income Tax Appellate Tribunal had allowed appeals for statistical purpose as per the decision of the Punjab and Haryana High Court in KnoreBremses India private vs AICT (2015) 6 Taxmann.com therefore submitted the writ petition was therefore, without merits. The order was in compliance of the order of the tribunal - ITAT.



12. It is further submitted that the assessments cannot be prolonged endlessly in as much as the issue has been answered on merits the Income Tax Appellate Tribunal therefore, it was a useless formality for the respondent to pass a Draft Assessment Order to facilitate the petitioner to one again to re-agitate the issue before Dispute Resolution Panel.

13. I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondent income tax. The issue is no longer res-integra. In fact, today by a separate order in W.P.No. 32751 of 2017, I have allowed the writ petition, under similar circumstances, the following observations-

19. When the law mandates a particular thing to be done in a particular manner, then it has to be done in the manner. In this connection, attention is drawn to the decision of the Privy Council in Nazir Ahmed Vs. King Emperor [AIR 1936 PC 253] which dictum has been followed by the Honourable Supreme Court in UPSC Vs. Papiiah [(1997) 7 SCC 614] and many other cases, TN Medical Officers Association [2020 SCC Online 699] and State of Jharkhand Vs. Amhag Cements [(2005) 1 SCC 368].

20. Therefore, once the case was remitted back to the respondents, it was incumbent on the part of the 1st respondent to have passed a draft Assessment Order under section 143 (3) read with Section 92CA (4) and Section 144C (1) of the Income Tax Act, 1961.

21. It was not open for the 1st respondent to bypass the statutory safeguards prescribed under the Act and thereby deny the right of the petitioner to approach the Dispute Resolution Panel. It is only thereafter, Final assessment order can be passed by the 1st respondent to Assessing Officer.

22. It would have been different if the appeal that was dismissed by the Income Tax Appellate Tribunal in first round of litigation in ITA Nos. 754/Mds/2014; 972/Mds/2015 and 455/Mds/2016.

23. Therefore, I find sufficient force in the arguments advanced by the learned counsel for the petitioner. In my view, the impugned order has been passed without jurisdiction. It was passed by bypassing statutory safeguards prescribed under



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the provisions of the Income Tax Act, 1961. Therefore, the present Writ Petition deserves to be allowed.

24. In the result, the impugned order is quashed and case is remitted back to the 1st respondent to pass a Draft Assessment Order. Since the dispute pertains to the assessment years 2009-10, the 1st respondent shall endeavour to pass Draft Assessment Order within period of 3 months from date of receipt of this order. No cost. Miscellaneous Petitions are closed.

14. Following the same, I am inclined to allow this writ petition also. Thus, the impugned orders dated 06.03.2017 passed by the respondent are quashed.

15. Since the dispute in the present case to the assessment years 2010-11 and 2011-12, respondent shall endeavour pass Draft Assessment Order under section 143 (3) read with Section 92 CA (4) and 144 C (1) of the Income Tax Act, 1961 within a period of 3 months from the date of receipt of a copy of this order. No cost. Consequently connected Miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-III)

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Sub Assistant Registrar

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To

The Office of the Assistant Commissioner of Income Tax
Corporate Circle 3(2), Chennai - 34.
IV Floor, New Block, 121, MG Road
Nungambakkam, Chennai - 600 034, TN.

+1cc to Mrs. Hema Muralikrishnan, Advocate, S.R.No.27318

W.P.Nos.25583 and 25584 of 2017

MG(CO)
CB(06/08/2021)