

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.34575 of 2019

and

WMP.Nos.35298, 35300 and 35302 of 2019

and WMP No.13887 of 2020

M/s.Lifecell International Private Limited
Represented by Mr.S.Abhaya Kumar Srisrimal
No.26, Vandalur Kelambakkam Main Road,
Keelakottaiyur Village, Chennai - 600 048.

...Petitioner

Vs.

1. Assistant Commissioner of Income Tax
Corporate Circle - 4(1) ("AO")
121 Uthamar Gandhi Salai,
Chennai - 600 034.
- 2 The Principal Commissioner of Income Tax
PCIT - 4, Chennai,
121 Uthamar Gandhi Salai,
Chennai - 600 034.

...Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari to call for the records on the file of the first respondent and quash the impugned order bearing No.ITBA/AST/F/17/2019-20/1021512082(1) dated 02.12.2019 along with the impugned notice in PAN AAECA7997B bearing No.ITBA/AST/S/148/2018-19/1015348398(1) dated 16.03.2019 issued under Section 148 of the Income Tax Act for the AY 2012-13.

For Petitioner : Mr.N.V.Balaji

For Respondent : Mrs.Hema Muralikrishnan
Senior Standing Counsel

O R D E R

The petitioner challenges order dated 02.12.2019 rejecting the objections to the assumption of jurisdiction for re-assessing income in relation to assessment year (A.Y.) 2012-13, in terms of the provisions of the Income Tax Act, 1961 (in short 'Act').

2. Heard Mr.N.V.Balaji, learned counsel for the petitioner and Mrs.Hema Muralikrishnan, learned Senior Standing Counsel for the respondents.

3. Five issues have been identified for re-assessment. Upon instructions from the Assessing Authority, learned Senior Standing Counsel would fairly state that issues at 1 and 5 are not seriously pressed.

4. As far as Issue No.1 is concerned, income from storage of stem cells have been offered to tax in the Vivad se Vishwas Scheme and as such, the question of re-assessment in regard to such incomes does not arise.

5. As far as Issue No.5 in relation to the payment of tax on Provident Fund and ESI contributions is concerned, the issue stands covered by a decision of this Court in the case of Industrial Securities and Intelligence India V. CIT in T.C. (A)Nos.585 and 586 of 2015 dated 24.07.2015. Hence, the re-assessment initiated on this score would not be pursued.

6. As far as Issue No.4 is concerned, refund was granted to the assessee while processing the return under Section 143 (1) which was omitted to be added back in the regular assessment. The amount is sought to be added back now. The question of re-assessment would not arise in such a situation, insofar as there is no escapement of income per se. The Assessing Authority could well have addressed this issue under Section 154 of the Act. The proposal for re-assessment on this score fails.

7. What survives for consideration are Issue Nos. 2 and 3. Issue No.2 relates to re-assessment of processing fee. The petitioner is engaged in the business of stem cell research and storage of stem cells collected from the umbilical cord of a new born child. At the time of delivery, a fee is collected for processing of the services offered. The entirety of the processing fee is disclosed as revenue. However, what is recognised for the purpose of taxation is only the fee collected from those cases where the mother-to-be has delivered and where the child is born prior to the end of the financial year in question. There are certain other circumstances where the processing fee is returned such as cases where the contracts between the expectant mother and the petitioner are not pursued.

8. There is no dispute on the position that the petitioner has been following a consistent method of accounting over the years and has been recognising income following a uniform system. The accounts of the petitioner would reveal the receipt of processing fee in advance and recognition of the amount quantified in that year in relation to deliveries is that have taken place within the financial year in question as income. The remaining fee is carried over to the subsequent financial year. Assessments for previous and later years following this consistent method of accounting have been accepted. The details in relation to the entirety of the processing fee received and the component recognised as income in this year are also available.

9. The Supreme Court in the case of CIT V/s. Woodward Governor India Pvt. Ltd. ((2009) 13 SCC 1) while considering the issue of recognition of Foreign Exchange fluctuations states at paragraph 34, that a consistent method of accounting and recognition of income followed by an assessee over the years is, normally, liable to be accepted.

10. In this case, admittedly, there is no change in the method of accounting followed. The methodology followed for recognition of revenue is the same, both prior and subsequent to this assessment. Thus there appears no justification for the present proposal to re-assess the income, seen in the light of the fact that for previous years, the accounts of the petitioner have been accepted by the Department.

11. In the context of deductibility of expenditure, the Bench states that a relevant parameter would be to ascertain whether, the same system of accounting were followed by an assessee from the very beginning and if there was any change in the interregnum, whether the change was bonafide. It was also material to ascertain whether the method adopted by an assessee for making entries in the books of accounts is as per nationally accepted accounting standards. At paragraph 34, the Bench states as follows:

34. Section 145(1) enacts that for the purpose of Section 28 and Section 56 alone, income, profits and gains must be computed in accordance with the method of accounting regularly employed by the assessee. In this case, we are concerned with Section 28. Therefore, Section 145(1) is attracted to the facts of the present case. Under the mercantile system of accounting, what is due is brought into credit before it is actually received; it brings into debit an

expenditure for which a legal liability has been incurred before it is actually disbursed. (see judgment of this Court in the case of United Commercial Bank v. CIT reported in 240 ITR 355).

Therefore, the accounting method followed by an

assessee continuously for a given period of time needs to be presumed to be correct till the AO comes to the conclusion for reasons to be given that the system does not reflect true and correct profits. As stated, there is no finding given by the AO on the correctness of the accounting standard followed by the assessee(s) in this batch of Civil Appeals.

12. Moreover, the proceedings for re-assessment have been initiated beyond a period of four years from the end of the relevant financial year and hence, in terms of the proviso to Section 147 of the Act, the revenue has to establish a failure on the part of the petitioner to have made a full and true disclosure of income to avail of the benefit of extended limitation.

13. In this context, learned revenue counsel relies on a judgment of the Supreme Court in the case of Calcutta Discount V. Income Tax Officer (41 ITR 191) where also, there was a challenge to a re-assessment made after a period of four years. The Constitution Bench had occasion to consider the scope and ambit of the phrase 'full and true disclosure' in the proviso to Section 147 as follows:

8..... The only question is whether the Income-tax Officer has reason to believe that "there had been some omission or failure to disclose fully and truly all material facts necessary for the assessment" for any of these years in consequence of which the under-assessment took place.

9. Before we proceed to consider the materials on record to see whether the appellant has succeeded in showing that the Income-tax Officer could have no reason, on the materials before him, to believe that there had been any omission to disclose materials facts, as mentioned in the section, it is necessary to examine the precise scope of disclosure which the section demands. The words used are "omission or failure to disclose fully and truly all material facts necessary for his assessment for that year." It postulates a duty on every assessee to disclose fully and truly all material facts necessary for his assessment. What facts are material, and necessary for assessment will differ from case to case. In every assessment proceeding, the assessing authority will, for the purpose of computing or determining the proper tax due from an assessee, require to know all the facts which help him in coming to the correct conclusion. From the primary facts in his possession, whether on disclosure by the assessee, or discovered by him on the basis of the facts disclosed, or otherwise - the assessing authority has to draw inferences as regards certain other facts; and ultimately, from the primary facts and the further facts inferred from them, the authority has to draw

the proper legal inferences, and ascertain on a correct interpretation of the taxing enactment, the proper tax leviable. Thus, when a question arises whether certain income received by an assessee's capital receipt, or revenue receipt, the assessing authority has to find out what primary facts have been proved, what other facts can be inferred from them, and, taking all these together, to decide what the legal inference should be.

10. There can be no doubt that the duty of disclosing all the primary facts relevant to the decision of the question before the assessing authority lies on the assessee. To meet the possible contention that when some account books or other evidence has been produced, there is no duty on the assessee to disclose further facts, which on due diligence, the Income-tax Officer might have discovered, the Legislature has put in the Explanation, which has been set out above. In view of the Explanation, it will not be open to the assessee to say, for example - "I have produced the account books and the documents : You, the assessing officer examine them, and find out the facts necessary for your purpose : My duty is done with disclosing these account-books and the documents." His omission to bring to the assessing authority's attention those particular items in the account books, or the particular portions of the documents, which are relevant, amount to "omission to disclose fully and truly and truly all material facts necessary for his assessment." Nor will he be able to contend successfully that by disclosing certain evidence, he should be deemed to have disclosed other evidence, which might have been discovered by the assessing authority if he had pursued investigation on the basis of what has been disclosed. The Explanation to the section, gives a quietus to all such contentions; and the position remains that so far as primary facts are concerned, it is the assessee's duty to disclose all of them - including particular entries in account books, particular portions of documents, and documents, and other evidence, which could have been discovered by the assessing authority, from the documents and other evidence disclosed.

14. In summation, the Bench would state that the duty of an assessee to make a full and true disclosure must be seen in the context of Explanation (1), which requires the assessee to make disclosure of all necessary primary facts, on the basis of which the Assessing Authority might reach a conclusion.

15. A full and true disclosure thus, means all facts primary and fundamental to an issue and it is not incumbent upon an assessee to provide anything over and above the same

or any material in addition thereto. It is also unnecessary for an assessee to speculate on what inference might be drawn by an Assessing Authority on the primary facts disclosed or furnish additional materials in anticipation of such inferences. The Bench in Calcutta Discount (supra) states that this exercise would be impossible since no assessee could delve into the mind of an Assessing Officer to assume what such inferences might be. To this end, at paragraph 11, the Bench states as follows:

11. Does the duty however extend beyond the full and truthful disclosure of all primary facts ? In our opinion, the answer to this question must be in the negative.

Once all the primary facts are before the assessing authority, he requires no further assistance by way of disclosure. It is for him to decide what inferences of facts can be reasonably drawn and what legal inferences have ultimately to be drawn. It is not for somebody else - far less the assessee - to tell the assessing authority what inferences, whether of facts or law, should be drawn. Indeed, when it is remembered that people often differ as regards what inferences should be drawn from given facts, it will be meaningless to demand that the assessee must disclose what inferences - whether of facts or law - he would draw from the primary facts.

16. Applying this judgment to the facts of the present case, the petitioner has made a disclosure of i) revenue from all income streams including processing fee ii) the portion of processing fee recognised as income for the purpose of taxation and (iii) balance is carried over to the subsequent year. It is true that there is no note in the financials or in the audited report explaining the method of accounting in detail, that is, to clarify the position that only the processing fee relating to the deliveries occasioned prior to 31.03.2012 had been recognised as income and the balance carried forward to the next year. However, as noted earlier, the petitioner has been following a consistent method of revenue recognition over the years and it is not the revenue's case that the financials for the later years were more elaborate for the purposes of Explanation (1) when compared to the present year. What constitutes primary facts for the purposes of 'full and true disclosure' must be seen in the context of the assessment of a source of income over the years as the Assessing Officer has understood it. In fact, if one were to take a different view of the matter for this one intervening year, it would distort the overall assessments over the years and this cannot be the intention of Section 147.

17. Thus applying the judgment of the Supreme Court in the case of Calcutta Discount (supra), I am of the view that the disclosure made by the petitioner in regard to the

assessment of processing fee is a full and true disclosure for the purposes of Section 147/148. The proposal for re-assessment on this issue also fails.

18. With regard to Issue No.3, the petitioner has claimed deduction under Section 35 (2AB). The approval for this deduction in Form 3 CM has been duly filed and, is admittedly, available on record. The only reason for which the present proceedings have been initiated is that Form 3 CM is not available on record. However, this appears to be a form to be exchanged inter se the Assessing Authority of the entity claiming deduction and the Prescribed Authority and it is thus for the Officer to have sought and obtained the same. In the light of there being no dispute on the position that Form 3 CM is admittedly available on file, I see no justification for the re-assessment initiated on this score.

19. The Writ Petition is allowed. No costs. Connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Commissioner
Office of the Principal Commissioner of CGST
and Central Excise Chennai North
Commissionerate No.26/1 Mahatma Gandhi Road
Nungambakkam, Chennai

2. The Assistant Commissioner of Income Tax,
Corporate circle-4(1)(AO),
121, Uthamar Gandhi Salai,
Chennai-600 034.

+1 CC.to M/s.Hema Muralikrishnan, Advocate, Sr.No.4155

+1 CC.to M/s. N.V. Balaji, Advocate, Sr.NO.4070

KV(CO)

SM/05/03/2021

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