IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.06.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.29673 & 34129 of 2018

and

W.M.P.Nos.34631 & 39656 of 2018 & 10774 of 2019

W.P.No.29673 of 2018 :-

M/s.Schneider Electric Systems India Pvt. Ltd.,
Rep., by its Chief Financial Officer,
Manish Moghe,
SP Plot 16-19 & 20A, Tamarai Tech Park,
Thiru Vi Ka Industrial Estate,
Guindy, Chennai-600 032. ..Petitioner

-vs-

1. The Secretariat,
Dispute Resolution Panel-2 Bengaluru,
'A' Wing, 4th Floor, Kendriya Sadan,
Koramangala, Bangalore-560 034.

2. The Assistant Commissioner of Income-tax,
Corporate Circle 6(1), Wanaparthy Block,
Room No.703, Seventh Floor,
121, Mahatma Gandhi Road, Chennai-600 034.

3. The Additional Commissioner of Income Tax,
Transfer Pricing Officer-3,
BSNL Building, Tower-1,
16, Greams Road, Chennai-600 006. ..Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records on the file of the 1st respondent in F.No.88/DRP-2/BANG/2017-18 dated 27.09.2018 for the assessment year 2014-15 and quash the same.

W.P.No.34129 of 2018 :-

M/s.Schneider Electric Systems India Pvt. Ltd.,
Rep., by its Company Secretary, Ms.Jaya,
SP Plot 16-19 & 20A, Tamarai Tech Park,
Thiru Vi Ka Industrial Estate,
Guindy, Chennai-600 032. ..Petitioner

-vs-

1. The Secretariat,
   Dispute Resolution Panel-2 Bengaluru,
   'A' Wing, 4th Floor, Kendriya Sadan,
   Koramangala, Bangalore-560 034.

2. The Assistant Commissioner of Income-tax,
   Corporate Circle 6(1), Wanaparthy Block,
   Room No.703, Seventh Floor,
   121, Mahatma Gandhi Road, Chennai-600 034.

3. The Additional Commissioner of Income Tax,
   Transfer Pricing Officer-3,
   BSNL Building, Tower-1,
   16, Greams Road, Chennai-600 006. ..Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records on the file of the second respondent in PAN: AABCS8027M dated 11.12.2018 for the assessment year 2014-15 and quash the same.

For Petitioner (In both W.Ps.)	:	Mr.R.V.Easwar, Senior Counsel assisted by Mr.Sandeep Bagmar
For Respondents	:	Ms.Hema Muralikrishnan, Senior Standing Counsel for Income Tax in W.P.29673/2018
		Mr.A.P.Srinivas, Senior Standing Counsel for Income Tax in W.P.34129/2018

COMMON ORDER

W.P.No.29673 of 2018 is filed questioning the validity of the order dated 27.09.2018 passed by the first respondent, Dispute Resolution Panel (DRP) for the assessment year 2014-15.

2.W.P.No.34129 of 2018 is filed challenging the assessment order passed by the second respondent dated 11.12.2018 for the assessment year 2014-15.

3.The petitioner is a subsidiary of Invensys Plc UK. During the financial year 2013-14, the petitioner was engaged in the business of manufacturing process control systems, temperature control systems and automated control systems used in refrigerators and related products. The petitioner operated in two major segments being Invensys Process Systems Division and Appliance Controls Division. The petitioner filed its return of income for the assessment year 2014-15 on 15.12.2014 declaring a loss of Rs.54,65,83,540/-. The petitioner's case was selected for scrutiny and notices under Sections 143(2) and 142 (1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") were issued by the second respondent. A reference was made to the third respondent being the Transfer Pricing Officer (TPO) under Section 92CA for determining the Arm's Length Price of the international transaction. The third respondent issued notice under Section 92CA(2) on 03.03.2017. Thereafter, a show cause notice was issued by the third respondent proposing to make adjustment to the international transaction on various grounds. The third respondent issued three show cause notices and the petitioner duly filed its detailed reply along with all necessary documents and proof to support their claim. However, the third respondent rejected the reply of the petitioner and confirmed the adjustment as proposed in the show cause notice by order dated 27.10.2017. The petitioner filed a rectification petition dated 12.12.2017 against the order dated 27.10.2017 wherein, there were mistakes apparent on record. The second respondent, being the Assessing Officer, completed the assessment by passing a draft assessment order dated 15.12.2017, wherein he accepted the adjustment proposed by the third respondent and also made addition to Rs.104,82,190,53/- on three grounds. The petitioner filed its objections dated 23.01.2018 in respect of additions/disallowances made by the third respondent and the second respondent and those objections were also not considered and the objections were rejected without assigning any reasons and the materials, documents, judgments and particulars provided were not even looked into, nor any finding was made in the order which is impugned in this writ petition. Thus, the petitioner is constrained to move the present writ petitions.

4.The learned Senior Counsel appearing on behalf of the petitioner mainly contended on the core issue, whether the adjustment is to be made segmentally or entry level approach is to be made. The respondents have not considered the judgments submitted by the petitioner. The learned Senior Counsel substantiated by stating that segmental approach is required in respect of the case of the writ petitioner. In support of their claim, the petitioner relied on the judgment of the Bombay High Court in CIT vs. Firestone International P. Ltd., reported in (2015) 378 ITR 58 (Bom.) and the judgment of the Delhi High Court in CIT vs. Keihin Panalfa Ltd. reported in (2016) 381 ITR 407 (Delhi) and subsequent judgments of the Bombay High Court following Firestone International P. Ltd. case.

5.The learned Senior Counsel is of an opinion that the DRP ought to have considered the judgments referred to by the petitioner for considering the case of the petitioner for applying the segmental approach. In the event of not considering the claim of the writ petitioner, they are expected to distinguish the same by considering those judgments. None has been done. Contrarily, the first respondent relied on the order passed by the Income Tax Appellate Tribunal, Chennai Bench (ITAT) and decided the case of the petitioner by applying entry level adjustment, which caused injury. Thus, the petitioner raised further objections, which were also not considered.

6.It is reiterated that the order impugned is an order passed by the quasi judicial authority, who is expected to follow the judicial discipline with reference to the judgments rendered by the higher courts. When the petitioner produced the judgments passed by the Bombay High Court and Delhi High Court, it is improper on the part of the first respondent to rely on the orders passed by the ITAT, Chennai Bench, without even distinguishing the judgments produced by the petitioner. Thus, the impugned order is directly in violation of the principles of natural justice and such an order passed, deserves to be re-visited and therefore, it is a fit case to be remanded back for fresh adjudication.

7.Admitting the appellate provisions made available to the petitioner, the learned Senior Counsel reiterated that in the present case, the order impugned is absolutely improper and not in consonance with the basic principles to be followed for exercising the quasi judicial power under the provisions of the Act. In this regard, the learned Senior Counsel solicited the attention of this Court with reference to the findings in proceedings dated 27.10.2017 passed by the TPO wherein there was no discussion about the rulings of the Bombay High Court or the Delhi High Court.

8.An incorrect information was recorded by stating that the decision of the Bombay High Court was under challenge before the Hon'ble Supreme Court of India and the Special Leave Petition was admitted. Based on the incorrect facts and by not considering the judgments of the Bombay High Court and Delhi High Court, the TPO relied on the orders passed by the ITAT, Chennai Bench and adopted entry level adjustment for deciding the factual aspects of the case of the writ petitioner. Thus, the very approach itself is not in consonance with the established principles of law, which is in violation of the principles of judicial discipline and thus, the case is to be remanded back for fresh consideration with a direction to consider the judgments of the Bombay High Court and Delhi High

Court for the purpose of adopting segmental approach, as far as the case of the petitioner is concerned.

9.The learned Senior Counsel drawn the attention of this Court with reference to the order impugned dated 27.09.2018 wherein absolutely there is no finding or consideration with reference to the objections raised by the writ petitioner. More specifically, Objection No.3 is referred wherein the petitioner raised the ground that "the learned TPO grossly erred in law and on facts by violating the principles of natural justice and proposing an adjustment of INR 1,447,512,401 which is in excess the total value of international transactions(costs and revenue) entered into by the assessee in the IPS projects segment (INR 1,112,577,971) thereby declaring the provisions of Section 92C of the Act read with Rule 10B(1)(e) of the Income Tax Rules, 1962.

10.The objections proceeded further by stating that the learned TPO grossly erred in violating the principles of natural justice by proposing an adjustment in excess of the total revenue in the IPS segment of the assessee. The learned TPO erred in proposing an adjustment at the entry level instead of restricting the adjustment to the value of international transactions. The DRP with reference to the objections has shown irrelevant considerations on the objections substantiated by relying the judgments and documents, which were not at all considered, nor any finding is made by the DRP in the impugned order and therefore, it is a case where re-adjudication is imminent and thus, the writ petition is to be allowed.

11.The learned Senior Standing Counsel disputed the contentions raised on behalf of the petitioner by stating that with regard to all such grounds including the jurisdictional error as well as the reasons furnished for the objections raised by the petitioner, the Income Tax Appellate Tribunal is empowered to consider and take a decision. This apart, an adjudication of facts with reference to the documents and evidences is required in this case for the purpose of forming an opinion whether the case falls under segmental approach or entry level adjustment. Therefore, the writ petition is to be rejected and the petitioner may be permitted to prefer an appeal as contemplated under the provisions of the Act.

12.The learned Senior Standing Counsel distinguished the judgment of the Bombay High Court by stating that the said case before the Bombay High Court was against the order passed by the Income Tax Appellate Tribunal and with reference to the point raised regarding segmental appraach and entry level adjustment, factual adjudications are to be made in the case of the petitioner and thus, it is a fit case where the petitioner must be permitted to approach the appellate authority for effective adjudication.

13.The learned Senior Standing Counsel referred to the judgment of this Court in the case of Hyundai Motor India Ltd. vs. Secretary, Income-tax Department reported in (2017) 86 taxmann.com 284 (Madras) wherein the proceedings of the DRP were challenged and the Court held that the petitioner should exhaust the appellate remedy for effective adjudication, as the Income Tax Appellate Tribunal is the final fact finding authority. The said judgment was affirmed the by the Hon'ble Division Bench of this Court in W.A.No.1344 of 2017 dated 06.10.2020. Therefore, the case of the writ petitioner squarely falls under the judgment cited and thus, the writ petition is to be rejected enabling the petitioner to prefer an appeal, if they have chosen to do so.

14.As rightly pointed out by the learned Senior Counsel appearing on behalf of the petitioner, gross violation of principles of natural justice is a ground to entertain a writ petition under Article 226 of the Constitution of India. This Court must be cautious in applying the principles in a judicious manner and all such violations need not be a cause for entertaining a writ petition, but certain violations of principles of natural justice shocking the conscious of the Court alone would provide a ground to entertain a writ petition. In every writ petition filed under Article 226, one way or other the ground of violation of principles of natural justice is made out. Erroneous orders are passed under many circumstances either by the original authority or by the appellate authority who all are exercising the quasi judicial powers. However, all such violation of principles of natural justice need not provide a cause for entertaining a writ petition under Article 226 of the Constitution of India. In the event of imminency or threat or urgency or other compelling circumstances, then alone, the appellate remedy needs to be waived and in all other circumstances, the parties are expected to exhaust the appellate remedy as contemplated under the statute.

15.As rightly pointed out by the learned Senior Counsel, the ITAT is the final fact finding authority and a ground also is raised that factual adjudication in the present case is required in order to form an opinion whether segmental approach is to be adopted or entry level adjustment is to be made. Such a rowing enquiry cannot be conducted by the High Court in a writ proceedings under Article 226 of the Constitution of India. The power of High Court under Article 226 is to scrutinise the process through which a decision is taken by the competent authority following the procedures contemplated and certainly not the decision itself. Thus, the importance of appellate remedy can never be undermined by the High Courts. Every authority created under a statute must be provided with an opportunity to adjudicate the issues with reference to documents and evidences, which would throw light on the issues and more so such findings would be of greater assistance for the High Court to exercise the power of judicial review under Article 226 in an effective and efficient manner. Thus, exhausting the appellate remedy is a rule and entertaining a writ petition, dispensing with the appellate remedy, is an exception.

16.In the present case, the learned Senior Counsel could able to articulate in an effective manner that the approach of the DRP is absolutely improper. The very principles to be applied in the present case that segmental approach or entry level adjustment which is to be applied,are not made in a proper manner by considering the judgments of the High Court of Bombay and Delhi and the documents and factual details produced. Thus, it goes root of the matter and therefore, re-adjudication is to be made by the very same authority.

17.This Court is of the considered opinion that such an adjudication shall be done even by the appellate authority, as the ITAT is empowered to adjudicate the facts and circumstances as well as the correctness or otherwise of the order passed by the DRP or other competent authority under the provisions of the Act. In fact, adjudication before the appellate authority is beneficial to either of the parties even to correct certain factual mistakes, if any, occurred during the adjudication before the original authority. Appellate provisions are enacted with a legislative intent to provide an opportunity to the aggrieved person to redress their grievances. Thus, such a benefit provided under a statute need not be denied by entertaining a writ petition, if the petitioner could not able to establish that the decision shocks the conscious of the Court so as to dispense with all appellate remedies and grant relief in a writ petition under Article 226 of the Constitution of India.

18.Practice of filing writ petitions before exhausting the statutory appellate remedy cannot be encouraged by the High Court ordinarily. Many such writ petitions are filed with an idea to avoid pre-deposits contemplated under the statute for entertaining an appeal by the appellate authority. Otherwise, such writ petitions are filed on the ground that preferring an appeal is time consuming. However, these grounds, if at all, raised, cannot be considered, as the appellate remedy contemplated under the statute has a definite legislative intention and important for the purpose of final fact finding. In the present case, the appeal to the Income Tax Appellate Tribunal is undoubtedly efficacious and the Tribunal is an expert forum and thus, the parties to the dispute are bound to adjudicate the disputed facts and the question of law before the Income Tax Appellate Tribunal. The mixed question of law and fact is to be adjudicated before the Tribunal and the final fact finding in respect of the disputes are of paramount importance for the purpose of exercising the power of judicial review by the High Court under Article 226 of the Constitution of India.

19.This apart, the order impugned dated 27.09.2015 passed by the DRP was communicated to the Assessing Authority, who in turn, passed the final assessment order in proceedings dated 11.12.2018. The Order dated 11.12.2018 is under challenge W.P.No.34129 of 2018. The final order of assessment is also an appealable order and the order passed by the DRP was incorporated in the final assessment order and therefore, the petitioner is at liberty to prefer an appeal before the appellate forum for adjudication of issues. In this regard, the petitioner is at liberty to file an appeal within a period of four weeks from the date of receipt of a copy of this order and on receipt of any such appeal, the appellate forum shall entertain the appeal, by condoning the delay in filing the appeal, if any, and decide the matter on merits and in accordance with law and by affording opportunity to all the parties. The said exercise is directed to be done as expeditiously as possible.

20.With the above observations and directions, both the writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

abr

To

1. The Secretariat,
   Dispute Resolution Panel-2 Bengaluru,
   'A' Wing, 4th Floor,
   Kendriya Sadan,
   Koramangala, Bangalore-560 034.

2. The Assistant Commissioner of Income-tax,
   Corporate Circle 6(1),
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   Chennai-600 006.

+2cc to M/s.Sandeep Bagmar, Advocate, S.R.No.28293 and 28294
+1cc to Mr.A.P.Srinivas, Senior Standing Counsel, S.R.No.28383
+1cc to M/s.Hema Muralikrishnan, Senior Standing Counsel, S.R.No.28370

W.P.Nos.29673 & 34129 of 2018

PL(CO)
RGA(20/07/2021)