IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	23.11.2021
Pronounced On	08.04.2022

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.Nos.1554, 1561 & 1567 of 2019
and
W.M.P.Nos.1729, 1734, 1736, 1741 and 28845 of 2019

MRF Ltd.
No.124, Greams Road,
Chennai 600 006
Represented by Arun Mammen
Managing Director ... Petitioner in all W.Ps.

Vs.

1.Deputy Commissioner of Income Tax,
Large Taxpayers Unit-2,
Chennai - Wanaparthy Block,
No.121, Mahatma Gandhi Road,
Nungambakkam, Chennai 600 034.

2. The Joint Commissioner of Income Tax,
Large Taxpayers Unit,
Chennai - Wanaparthy Block,
No.121, Mahatma Gandhi Road,
Nungambakkam, Chennai 600 034. ... Respondents in all W.Ps.

Prayer in W.P.No.1554 of 2019: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certioari, calling for the records of the 1st respondent in Order No.ITBA/AST/S/143(3)/2018-19/1014638968(1) in the petitioner's case dated 27.12.2018 and quash the same.

Prayer in W.P.No.1561 of 2019 : Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certioari, calling for the records of the 2nd respondent in Order under Section 144A of the Income Tax Act, 1961 dated 21.12.2018 in the petitioner's case, PAN No.AAACM4154G, for Assessment Year 2016-2017 and quash the same.

Prayer in W.P.No.1567 of 2019 : Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Prohibition, prohibiting the respondents from taking any action to make additions in its Income Tax Assessment for the assessment year 2016-17 in respect of expenditure incurred towards procurement of raw materials from M/S.MRF SG PTE Ltd under either section 40A(2) or Section 37 of the Income Tax Act, 1961.

For Petitioner : Mr. R.V.Easwar, Senior Counsel
Asst.by Mr.M.V.Swaroop,
H.S.Hredai and Rubal Bazal
(in all W.Ps.)

For Respondents: Mrs.Hema Muralikrishnan
Senior Standing Counsel
(in all W.Ps.)

COMMON ORDER

In W.P.No.1561 of 2019, the petitioner has challenged the impugned direction of the second respondent dated 21.12.2018 under Section 144-A of the Income Tax Act, 1961. In W.P.No.1561 of 2019, the petitioner has challenged the consequential Assessment Order dated 27.12.2018 passed by the first respondent. In W.P.No.1567 of 2019 the petitioner has prayed for a writ of prohibition, prohibiting the respondents from taking any action to make additions in its Income Tax Assessment for the assessment year 2016-17 in respect of expenditure incurred towards procurement of raw materials from M/S.MRF SG OTE Ltd under either section 40A(2) or Section 37 of the Income Tax Act, 1961.

2. The dispute in this case pertains to the assessment year 2016-17. The petitioner had filed returns under Section 139 of the "Income Tax Act, 1961" ("IT Act, 1961" for the sake of brevity), which were examined by the first respondent by issuing notices under Section 142 (1) of the IT Act, 1961. The dispute arose as to whether the amounts paid by the petitioner to its Singapore Subsidiary namely MRF SG PTE was inflated so as to reduce the profit and the income tax liability of the petitioner.

3. Under these circumstances, the 1st respondent issued a notice dated 13.11.2018 and called upon the petitioner to show cause as to why a reference to a Transfer Pricing Officer should not be made in terms of Section 92 (1) (A) of IT Act, 1961 read with instructions No.3/2018 dated 10.3.2016.

4. The petitioner replied to the above notice, thereafter, no decision was taken as to whether the case was referred to the Transfer Pricing Officer or the assessment was to be completed by the first respondent as the jurisdictional Assessing Officer.

5. During the course, it appears that the first respondent made a reference to the second respondent under Section 144 (A) of the IT Act, 1961. The second respondent by a direction directed the first respondent to disallow 2.5 percent of the transacted amount amounting to Rs.28,05,26,782/- under Section 40 (A) (2) (a) and Section 37 of the Income Tax Act, 1961. The consequential impugned Assessment Order dated 27.12.2018 of the first respondent has been thus challenged on ground that the directions of the second respondent was not in accordance with Section 144 A of the Income Tax Act, 1961.

6. Appearing on behalf of the petitioner, learned Senior Counsel for the petitioner submits that under Section 144 A of the Income Tax Act, 1961 before the Joint Commissioner namely the second respondent herein could pass any prejudicial order against the petitioner, a notice of hearing ought to have been given to the petitioner as much as the direction of the second respondent stipulates that 2.5 per cent of the transacted amount amounting to Rs.28,05,26,782/- is to be disallowed. The fact that the 2nd respondent passed an order dated 21.12.2018 was not known to the petitioner.

7. Learned Senior Counsel further submits that explanation to Section 144 A also will not apply to the situation under consideration as the directions are not in line with the letter and as per of Section 144 A of the Income Tax Act, 1961.

8. Learned Senior Counsel further submits that the last date for completing the assessment was 31.12.2018 and therefore, the first respondent has mechanically followed the directions purportedly issued by the second respondent on 21.12.2018 and confirmed the demand by issuing a show cause notice dated 21.12.2018. It is further submitted the by reply dated 26.12.2018 the petitioner sought for further time. However, the first respondent proceeded to pass the impugned assessment order under Section 143 (3) of the IT Act, 1961 on 27.12.2018 in order to complete the assessment.

9. Learned Senior Counsel further submits that apart from the fact that the impugned order of the first respondent dated 27.12.2018, mechanically adopts the directions of the second respondent dated 21.12.2018, it is submitted that the impugned orders cannot be allowed to remain and is liable to be quashed in the light of the decision of the Hon'ble Supreme Court in Sun Builders Vs. Union of India [2001 25 ITR 197] which was also followed by the Hon'ble High Court of Allahabad in Vijaya Kumar Sharma Vs. Appropriate Authority 1996 and the decision of the Hon'ble High Court of Allahabad in V.K. Sharma Vs. Appropriate Authority 1996 [220 ITR 509].

10. Learned Senior Counsel further submits that the time limit for finalizing the assessment expired on 23.12.2018 and therefore the respondents cannot be allowed to complete the assessment after the expiry of the time limit prescribed in the light of the decision of the Hon'ble Supreme Court referred to supra and that of the Hon'ble High Court of Allahabad referred to supra.

11. Learned Senior Counsel,also relied on the decision of the Hon'ble Supreme Court in 2009 6 SCC 372 STATE OF U.P.v.PARAS NATH SINGH (Criminal Appeal No. 499 of 2004) MAY 5, 2009 and referred to para 6 from the said judgement which reads as under:

> 6. Use of the expression, `official duty' implies that the act or omission must have been done by the public in the course of his service and that it should have been in discharge of his duty. The Section does not extend its protective cover to every act or mission done by a public servant in service but restricts its scope of operation to only those acts or omissions which are done by a public servant in discharge of official duty.

12. Learned Senior Counsel submits that proviso to Section 144 A couched with the negative language and therefore, the direction of the second respondent to the non-est in law and cannot be basis on assessment could have been by the first respondent.

13. Defending the impugned orders, learned counsel for the respondents submits that there is no delay on the part of the respondents in either issuing the notice or while passing the Assessment Order.

14. It is further submitted earlier a decision was taken to refer the case to the Transfer Pricing Officer under Section 92 (C) of the Income Tax Act, 1961 read with the instructions 3/2018 dated 10.03.2016. Later the direction was sought for from the second respondent, Joint Commissioner of Income Tax under Section 144 A and the second respondent after examining the records gave the directions to the second respondent which is binding on the first respondent.

15. Learned counsel for the respondents further submits that petitioner has an alternative remedy by an appeal before the Assistant Commissioner and therefore, also the petitioner is liable to be dismissed.

16. By way of re-joinder learned Senior Counsel submitted that the directions of the second respondent would have been binding, provided to Section 144 A of the Income Tax Act, 1961, was followed in case and since the direction was prejudicial to the interest of the petitioner the directions of the second respondent could not be the basis of the assessment.

17. I have considered the arguments advanced by the learned counsel for the petitioner and learned Senior Counsel for the respondents and I have also perused the impugned orders and the decisions of the Hon'ble Supreme Court and that of the Hon'ble High Court of Allahabad cited above.

18. This Court is not sitting as an Appellate Court while exercising its Jurisdiction under Article 226 of the Constitution of India. Therefore, I am refraining from making any observation on the correctness of the computation of the income in the impugned Assessment order dated 27.12.2018.

19. At the same time, what is evident that the impugned Assessment Order dated 27.12.2018 in W.P.No.1554 of 2019 has been passed, pursuant to the impugned direction of the second respondent dated 21.12.2018 in the impugned Assessment Order in W.P.No.1561 of 2019 .

20. The prior to passing of the impugned Assessment Order dated 27.12.2018, a show cause notice dated 21.12.2018 was issued to the petitioner to which the petitioner also replied. Initially, the time granted for replying to the Show Cause Notice was to expire on 24.12.2018 by 11.30 p.m.. Thereafter, the time was extended till 26.12.2018. The petitioner also appears to have given a reply on 26.12.2018 to the aforesaid Show Cause Notice dated 21.12.2018. The Show Cause Notice does not indicate that an earlier direction had been issued by the second respondent - Joint Commissioner on 21.12.2018. The show cause notice however proposed disallowance of 2.5% of the transaction under Section 40A(2)(a) on the amounts paid to the petitioner viz., M/s.MRF SG PTE LTD.

21. Only in the Impugned Assessment Order fact regarding the suo-motu direction given by the second respondent on 21.12.2018 was mentioned as is evident from a reading of the impugned Assessment Order dated 27.12.2018. Relevant portion reads as under:-

> " During the Assessment proceedings, JCIT (LTU) by suo-moto issued directions u/s.144A in this issue,

which is binding on the Assessment Officer. The above directions u/s.144A received the undersigned on 21.12.2018 at 5.30 p.m. Immediately, an opportunity given to the assessee-company to furnish their reply by 24.12.2018. On 24.12.2018, the assessee company requested further time to furnish their reply. Accordingly, the assessee-company was granted another opportunity to furnish the reply by 26.12.2018. The assessee- company has given final reply on 26.12.2018. The assessee-company was granted another opportunity to furnish the reply by 26.12.2018. The assessee company should note that in the crutial period of finizaling the scrutiny assessment order, the undersigned does not have much time to allocate to submit the reply. Still another opportunity given to the assessee- company to file their reply on 26.12.2018. Hence, the principle of natural justice is duly followed in the instant case.

As per the above discussion made elaborately in the JCIT, LTU direction which is bining on the Assessment Order. Accordingly, 2.5% of the transaction amounting to Rs.28,05,26,782/- paid to M/S.MRF SG PTELimited under Section 40A(2)(a) and Section 37 of the Income Tax Act".

22. Section 144-A of the Income Tax Act, 1961 reads as under:

Power of Joint Commissioner to issue directions in certain cases.

" 144A. A Joint Commissioner may, on his own motion or on a reference being made to him by the Assessing Officer or on the application of an assessee, call for and examine the record of any proceeding in which an assessment is pending and, if he considers that, having regard to the nature of the case or the amount involved or for any other reason, it is necessary or expedient so to do, he may issue such directions as he thinks fit for the guidance of the Assessing Officer to enable him to complete the assessment and such directions shall be binding on the Assessing Officer :

Provided that no directions which are prejudicial to the assessee shall be issued before an opportunity is given to the assessee to be heard.

Explanation.—For the purposes of this section no direction as to the lines on which an investigation connected with the assessment should be made, shall be deemed to be a direction prejudicial to the assessee."

23. Any decision pre-judicial to the interest of the assessee has to precede with an opportunity of being heard under Section 144A. Section 144-A does not empower to the Joint Commissioner to give a direction to an Assessing Officer to complete the assessment in a particular manner. Directions to be exercised by the Joint Commissioner under Section 144(A) is merely intended to guide the Assessing Officer to complete the assessment and only such directions are binding on an Assessing Officer. Since directions contained in the impugned order passed by the Joint Commissioner was prejudicial to the petitioner and to complete the assessment in a particular manner, petitioner should have been called for hearing by the second respondent Joint Commissioner. As there is a violation of Section 144(A) of the Income Tax Act, 1961, the consequential the Assessment Order dated 27.12.2018 passed by the first respondent also has to go. It would have different, if the 1st respondent independently had decided to proceed with the proposal in the Show Cause Notice.

24. Therefore, the impugned direction dated 21.12.2018 of the second respondent impugned in W.P.No.1561 is hereby quashed. However, there is no necessity to remit the cases back to the second respondent to re-do exercise under Section 144 A of the Income tax Act, 1961.

25. Under these circumstances, the impugned Assessment Order dated 27.12.2018 passed by the first respondent, impugned in W.P.No.1554 of 2019 is also hereby quashed. Consequently, the case is remitted back to the first respondent to pass an independent fresh Assessment Order after considering the submission of the petitioner. It is needless to state before passing such order, the petitioner shall be heard, if the petitioner so desires.

26. Considering the fact that the dispute pertains to the assessment year 2016-17, I direct the first respondent to complete the exercise, within a period of three months from the date of receipt of a copy of this order.

27. In view of the above, no separate order is required to be passed in W.P.No.1567 of 2019. Hence, this writ petition is closed. W.P.Nos.1554 and 1561 of 2019 are stands allowed with the above observation. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

nst/kkd

To

1.The Deputy Commissioner of Income Tax,
Large Taxpayers Unit-2,
Chennai - Wanaparthy Block,
No.121, Mahatma Gandhi Road,
Nungambakkam, Chennai 600 034.

2. The Joint Commissioner of Income Tax,
Large Taxpayers Unit,
Chennai - Wanaparthy Block,
No.121, Mahatma Gandhi Road,
Nungambakkam,
Chennai 600 034.

+1cc to Mr.M.V.Swaroop, Advocate SR.No.25250

+1cc to Mrs.T.Hema Muralikrishnan, Advocate SR.No.24344

W.P.Nos.1554,1561 & 1567 of 2019

MT(CO)
GMY(06/05/2022)