IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **27.02.2023**

CORAM

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

W.P.No.6875 of 2021 and
W.M.P. No.7424 of 2021

M/s.Sensiple Software Solutions Private Limited,
represented by its Authorised Signatory
Ganesh Muthukrishnan ... Petitioner

Vs.

1.The Assistant Commissioner of Income Tax,
CORP. Circle 6(1) Chennai,
Room No.703, 7th Floor,
Chennai – Wanaparthy Block,
No.121, Mahatma Gandhi Road,
Nungambakkam,
Chennai-600 034.

2.The Deputy Commissioner of Income Tax,
TPO Circle 3(1) Chennai,
Income Tax Office – BSNL Tower,
No.16, Greams Road,
Chennai – 600 006. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records relating to the proceedings of the second respondent in Pan:AAGCS4619C AY 2016-17 Order No.ITBA/TPO/F/92CA3/2019-20/1019685213(1) dated 01.11.2019 and the consequential proceedings of the first respondent in Pan:AAGCS4619C bearing DIN/Order No.ITBA/AST/S/143(3)/2019-20/1025892121(1) for the assessment year 2016-17 dated 27.02.2020 and quash the same.

For Petitioner	:	Mr.S.Raveekumar
For Respondents	:	Mr.B.Rama Kumar, Senior Standing Counsel for R1 Mr.D.Prabhu Mukunth Arunkumar, Junior Standing Counsel and Mr.S.Rajesh, Junior Standing Counsel for R2

ORDER

The petitioner has challenged the impugned order dated 01.11.2019, passed by the Transfer Pricing Officer, namely, the second respondent in respect of the assessment year 2016-17 on the ground that the impugned order of the Transfer Pricing Officer is barred by limitation as per Section 92CA(3A) of the Income Tax Act 1961. The following facts are not in dispute:

a)The assessment order pertains to the assessment year 2016-17. Admittedly, the assessment order for the aforementioned assessment year will have to be passed on or before 31.12.2019;

b)As per Section 92CA(3A) of the Income Tax Act, whenever the Assessing Officer refers the matter to the Transfer Pricing Officer with regard to International transaction, the Transfer Pricing Officer will have to pass an order within sixty days prior to passing of the assessment order by the Assessing Officer;

2.The Department contends that since the Transfer Pricing Officer namely, the second respondent herein has passed the order on 01.11.2019, the said order is within the period of limitation prescribed under Section 92 CA(3A) of the Income Tax Act. However, the same is disputed by the petitioner, who would contend that sixty days period expired on 31.10.2019 and therefore, the impugned order of the Transfer Pricing Officer, the second respondent herein is barred by limitation.

3.The very same issue was raised in a batch of writ petitions, filed by various other assessees and the said writ petitions were allowed holding that the order of the Transfer Pricing Officer is barred by limitation. Aggrieved by the same, the Department preferred Writ Appeals in W.A. Nos.1120 of 2021 etc. batch before the Division Bench of this Court. By common judgment dated 31.03.2022 in the said Writ Appeals, after giving due consideration to the very same contentions that have been raised by the Department in this writ petition, the Division Bench, accepting the findings of the learned Single Judge, confirmed the same by holding that the last date for the Transfer Pricing Officer to pass the order was on 31.10.2019 and since the order was passed on 01.11.2019, the said order is barred by limitation.

4.Learned Standing Counsels appearing for the respondents would not dispute the judgment dated 31.03.2022, passed in the aforementioned Writ Appeals by the Division Bench of this Court, involving a similar issue. They would however submit that as against the Division Bench judgment dated 31.03.2022, Special Leave Petitions have been filed with condone delay petitions. He would submit that in respect of some of the condone delay petitions, the Hon'ble Supreme Court has ordered notice and in one of them, namely, S.L.P. (Civil) Diary No.32770 of 2022, condone delay petition was allowed and the delay was condoned and notice has been issued to the respondents in the said S.L.P.

5.Admittedly, no stay has been granted by the Hon'ble Supreme Court and in one of the S.L.Ps, namely, S.L.P. (Civil) Diary No.32770 of 2022, delay has been condoned and in other S.L.Ps, notice has been issued to the respondents in the condone delay petitions. Since the Division Bench of this Court has already considered the very same issue, that has been raised in this writ petition, the benefit granted to those petitioners must also enure to the benefit of this writ petitioner also. Accordingly, the impugned order dated 01.11.2019 is hereby quashed on the ground that the same is barred by limitation and it has been passed beyond the time limit fixed under Section 92CA(3A) of the Income Tax Act. Consequently, connected W.M.P. stands closed. No costs.

27.02.2023

vga

To

1.The Assistant Commissioner of Income Tax,
CORP. Circle 6(1) Chennai,
Room No.703, 7th Floor,
Chennai – Wanaparthy Block,
No.121, Mahatma Gandhi Road,
Nungambakkam,
Chennai-600 034.

2.The Deputy Commissioner of Income Tax,
TPO Circle 3(1) Chennai,
Income Tax Office – BSNL Tower,
No.16, Greams Road,
Chennai – 600 006.

ABDUL QUDDHOSE, J.

vga

W.P.No.6875 of 2021 and
W.M.P. No.7424 of 2021

27.02.2023