



W.P.Nos.6635, 27428 & 27432 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:
25.07.2023

Pronounced on:
17.11.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.6635, 27428 & 27432 of 2022

and

W.M.P.Nos.6716, 6718, 26622, 26625, 26627, 26631 & 16111 of 2022
& 839, 874 of 2023

M/s. BNY Mellon Technology Private Limited,
Represented by its authorised signatory,
Nitin Chandel,
No.4, 10th Floor, Tidel Park, Canal Bank Road,
Taramani,
Chennai – 600 113.
Now at
Ground to Sixth Floor of Coral Block 3,
Survey No.181/183, Embassy Splendid Techzone,
200ft Pallavaram Thoraipakkam radial Road,
Chennai – 600 043.

.. Petitioner
(in all cases)

Vs.

1.Additional / Joint / Deputy / Assistant Commissioner
of Income Tax income-tax Officer,
National e-Assessment Centre, Delhi.

2.Deputy Commissioner of Income-tax,
Corporate Circle 1(1),
Room 611, Wanaparthi Block, VI Floor,
121, Mahatma Gandhi Road,
Nungambakkam,
Chennai.



W.P.Nos.6635, 27428 & 27432 of 2022

3.Principal Commissioner of Income Tax-I,
121, Mahathama Gandhi Road,
Nungambakkam, Chennai.

.. Respondents
(in all cases)

Prayer in W.P.No.6635 of 2022: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records on the file of the Respondents and quash the impugned order in PAN AAACI6177K, dated 01.03.2022 in DIN and Letter No.ITBA / AST / F / 17 / 2021-22/1040217927(1) issued by the 1st respondent along with impugned notice in PAN AAACI6177K dated 25.03.2021 in DIN & Notice Number ITBA / AST / S / 148 / 2020-21 / 1031769518(1) issued by the 2nd respondent under Section 148 of the Income Tax Act for the Assessment year 2014-15.

Prayer in W.P.No.27428 of 2022: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records on the file of the Respondents and quash the impugned Notice issued under Section 274 read with Section 271(1)(c) of the Act dated 30.03.2022 in DIN: ITBA / PNL / S / 271(1)(C) / 2021-22 / 1042184888(1) for the AY 2014-15, by the 1st respondent.

Prayer in W.P.No.27432 of 2022: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records on the file of the Respondents and quash the order of the 1st respondent in DIN-ITBA / AST / S / 147 / 2021-22 / 1042184608(1) dated 30.03.2022 in PAN – AAACI6177K passed under Section 147 read with Section 144B of the Income Tax Act, 1961 for the AY 2014 –



W.P.Nos.6635, 27428 & 27432 of 2022

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(In all cases):

For Petitioner : Mr.N.V.Balaji
For Respondents : Mr.B.Ramana Kumar
Senior Standing Counsel
Assisted by
Mr.Prabhu Mukunth Arun Kumar
Junior Standing Counsel

COMMON ORDER

By this common order, all the three Writ Petitions are disposed of.

2.In WP.No.6635 of 2022 the petitioner has challenged the impugned order dated 01.03.2022 passed by the 1st respondent disposing of the petitioner's objection against re-opening of the Assessment for the Assessment year 2014-2015 of the petitioner pursuant to the impugned notice dated 25.03.2021 issued by the 2nd respondent under Section 148 of the Income Tax Act, 1961.

3.The petitioner had failed to secure an interim order from this Court after the above Writ Petition was listed for admission. By an order dated 22.03.2022, this Court had directed the respondents to proceed with the assessment. Meanwhile, the Writ Petition was directed to be



listed along with WP.No.3166 of 2021.

4.Since the respondents were directed to proceed further with the assessment, the impugned revised assessment order dated 30.03.2022 came to be passed by the 1st respondent. This has been challenged by the petitioner in WP.No.27432 of 2022.

5.In WP.No.27428 of 2022, the petitioner has challenged the impugned notice dated 30.03.2022 issued under Section 274 read with Section 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) seeking to impose penalty on the **petitioner**.

6.The case was heard at length and the submissions advanced on behalf of the petitioner and on behalf of the respondents were made by the respective counsels for the petitioner and the respondents.

7.It was agreed by the counsels that the fate of the WP.Nos.27432 & 27428 of 2022 will hinge on the decision to be taken by this Court in WP.No.6635 of 2022, wherein the order dated 25.03.2021 disposing of the objection against reopening of the assessment, vide impugned notice dated 01.03.2022 issued under Section 148 of the Act for the assessment



year 2014-2015 has been challenged.

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Brief Facts of the Case are under:

8.The petitioner is a subsidiary of BNY Mellon Apac Services Holdings, from Mauritius, which is a part of the The Bank of New York Mellon Group ('BNYM Group'). The petitioner provides services to the group companies.

9.The petitioner had filed a regular returns under Section 139 of the Act for the assessment year 2014-2015 on 28.11.2014. The return filed by the petitioner under Section 139 of the Act was scrutinized. The return was assessed and ultimately an assessment order came to be passed on 28.09.2018 under Section 143(3) read with section 92CA(3) and Section 144C(8) of the Act. The said assessment order dated 28.09.2018 came to be passed after the petitioner was called upon to explain the details.

10.The specific case of the petitioner is that invocation of Section 148 of the Act on 25.03.2021 which is subject matter of challenge in



WP.No.6635 of 2022 was without jurisdiction as the petitioner had filed all the documents that were required for assessment before the assessment order came to be passed on 28.09.2018 and therefore invocation of Section 148 for the purpose of re-assessment to Section 147 of the Act as it stood prior to its amendment with effect from 01.04.2021 during the period in dispute was not available to the Income Tax Department.

11.The case of the petitioner is that the petitioner had certain income from its export business and therefore had both profit and loss on account of the fluctuations in the foreign exchange. The total income generated from the foreign exchange for a sum of Rs.5,23,99,372/- was reduced by Rs.1,43,82,361/- towards foreign exchange loss and therefore, the petitioner offered tax on the net foreign exchange gain of Rs.3,80,17,011/- (Rs.5,23,99,372/- - Rs.1,43,82,361/-) along with other income in the return.

12.It is the case of the petitioner that along with the return that was filed on 28.11.2014, the petitioner had not only uploaded the balance sheet, but also the profit and loss account. Subsequently, the annexure /



appendix to the profit and loss account together with Notes of Account to the Financial Statement were also furnished to the Income Tax Department along with their covering letter dated 14.10.2015.

13.It is submitted that the statement of computation of taxable income was filed as Annexure – 3. The copy of the audited Profit and Loss Account, Balance Sheet and the Auditor's report for the Financial Year (FY – 2013-2014) was also filed as Annexure-4.

14.It is submitted that the petitioner was also called for a hearing on 22.09.2016. Thereafter, a draft assessment order was passed by the Deputy Commissioner of Income Tax, which was disputed by the petitioner before the Dispute Resolution Panel, pursuant to which the assessment was completed on 28.09.2018 and Assessment Order came to be passed on 28.09.2018 under Section 143(3) read with section 92CA(3) and Section 144C(8) of the Act.

15.It is further submitted that the invocation of power under Section 148 of the Act on 25.03.2021 was without merits as the reason that was given for re-opening of the assessment in the notice issued under



Section 143(2) read with Section 147 of the Act on 05.05.2021, clearly states that the reason for re-opening the assessment was “on perusal of the profit and loss account, wherein it was found that the petitioner had claimed a sum of **Rs.3,80,170,011/-** towards net gain on account of foreign exchange fluctuations under other income (Schedule-28) and that this amount includes unrealized foreign exchange loss to the tune of Rs.1,43,82,361/-”.

16.It is therefore submitted that invocation of extended period of limitation under Section 148 of the Act for Section 147, as it stood through the period in dispute prior to the amendment of the Income Tax Act, 1961 was clearly without jurisdiction. In this connection, a reference is made to the decision of the Hon'ble Surpeme Court in **Calcutta Discount Co. Ltd., Vs. Income-tax Officer**, [1961] 41 ITR 191 (SC).

17.It is submitted that even otherwise the impugned notice issued under Section 148 of the Act was inspired from change of opinion by the incumbent who issued the impugned notice dated 25.03.2021 under Section 148 of the Act and therefore contrary to the law settled by the Division Bench of Delhi High Court in **Kelvinator of India Ltd., Vs.**



Commissioner of Income-tax, Delhi, which was affirmed by the Hon'ble Supreme Court in **Commissioner of Income-tax, Delhi Vs. Kelvinator of India Ltd.**, [2010] 320 ITR 561.

18. In this connection, the decision of all the Courts including thereof this High Court, in the following cases were relied on:-

- (i) **Commissioner of Income-tax Vs. Foramer France**, [2003] 264 ITR 566 (SC);
- (ii) **Commissioner of Income-tax Vs. Corporation Bank Ltd.**, [2002] 254 ITR 791 (SC);
- (iii) **Asianet Star Communications (P.) Ltd., Vs. Assistant Commissioner of Income-tax Non-Corporate Circle 20(1)**, [2020] 422 ITR 47 (Madras);
- (iv) **Commissioner of Income-tax, Chennai Vs. Schwing Stetter India (P.) Ltd.**, [2015] 378 ITR 380 (Madras);
- (v) **Haryana Acrylic Manufacturing Co. Vs. Commissioner of Income-tax**, [2009] 308 ITR (Delhi);
- (vi) **Commissioner of Income-tax, Delhi Vs. Kelvinator of India Ltd.**, [2010] 320 ITR 561 (SC);
- (vii) **Bapalal & Co. Exports Vs. Joint Commissioner of Income-tax(OSD)**, [2007] 289 ITR 37 (Madras),



- (viii) **Commissioner of Income-tax, Chennai Vs. India Cements Ltd., [2020] 424 ITR 410 (Madras),**
- (ix) **Indian & Eastern Newspaper Society Vs. Commissioner of Income-tax, [1979] 119 ITR 996 (SC),**
- (x) **Commissioner of Income-tax, Delhi Vs. Woodward Governor India (P.) Ltd., [2009] 312 ITR 254 (SC);**
- (xi) **Sahkari Khand Udyog Mandal Ltd., Vs. Assistant Commissioner of Income-tax, [2015] 370 ITR 107 (Gujarat);**
- (xii) **Asian Paints Ltd., Vs. Deputy Commissioner of Income-tax, [2008] 296 ITR 90 (Bombay) and**
- (xiii) **Aroni Commercials Ltd., Vs. Deputy Commissioner of Income-tax-2, [2014] 362 ITR 403 (Bombay).**

19. Even otherwise on merits, it is the submission of the petitioner that the petitioner was following a mercantile system of accounting and the assets / liabilities on revenue account denominated in foreign currency and outstanding at the year end were revalued taking into account the rate of exchange prevailing on closing date.

20. Any increase / decrease in the asset / liability was thus revalued



and was accounted as loss / gain. The loss arising on account of fluctuation in foreign currency with respect to outstanding liabilities on revenue account, was allowable as a revenue expenditure under Section 37 of the Act, notwithstanding that liability is to be discharged at a later date.

21.It is submitted that the issue is covered by the decision of the Hon'ble Supreme Court in **CIT Vs. Woodward Governor (P.) Ltd.**, [2009] 312 ITR 254 (SC), wherein it was held that for a taxpayer following mercantile method of accounting, exchange fluctuation loss recognized in books on restatement of monetary foreign currency asset or liability is a real loss.

22.It is submitted that such loss cannot be regarded as contingent or hypothetical. Further, where the loss is suffered by the assessee in respect of a revenue liability on account of exchange difference in the balance sheet would be an item of expenditure allowable under Section 37(1) in the year of accrual.

23.Defending the stand of the respondent, the learned Senior



Standing Counsel for the respondents would submit that the petitioner has not made a true and full disclosure of all the material that is required for completing the assessment and therefore, the Department was justified in re-opening the assessable vide impugned notice dated 25.03.2021 and consequently the order dated 01.03.2022 was passed over ruling the objection of the petitioner.

24.It is submitted that the challenge to the impugned notice dated 25.03.2021 issued under Section 148 of the Income Tax Act, 1961 and impugned order dated 01.03.2022 is without any merits.

25.It is submitted that none of the documents were filed by the petitioner indicating that the petitioner had given a break-up of the amount that was claimed as loss incurred by the petitioner from the foreign exchange transactions and what as declared by the Income Tax authority at the time of filing of the return together with the profit and loss account and the balance sheet only to show the net income from the foreign exchange was for a sum of Rs.3,80,17,01/- after deleting a sum of Rs.1,43,82,361/- from Rs.5,23,99,372/-. It is therefore submitted that these Writ Petitions are liable to be dismissed.

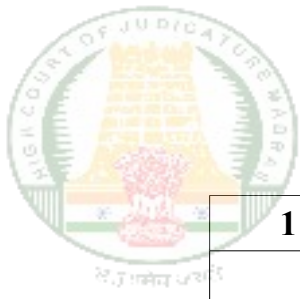


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26.I have perused the impugned orders and the documents that were filed by the petitioner before the assessing officers before the assessment order dated 28.09.2018 was passed under Section 143(3) read with section 92CA(3) and Section 144C(8) of the Act.

27.The return that was filed by the petitioner on 28.11.2014 for the assessment year 2014-2015 captures the balance sheet and the profit and loss account and the annexures to the same. The amount that has been shown in the Return of Income of the petitioner contains extracts from the Profit and Loss Account in the Return. It states “profit on account of currency fluctuation”. It reads as under:-

1	Revenue from operations	
	A	
	B	
	C	
2	Other income	
	i	
	ii	
	iii	
	iv	
	v	
	vi	
	vii	



1	Revenue from operations	
	Viii	Profit on account of currency fluctuation

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28. Thus, it cannot be said that the Return that was uploaded by the petitioner on 28.11.2014 contained all the information that was required for the Assessing Authority to pass an appropriate Assessment Order. However, the petitioner has subsequently furnished all the information in the form of a hard copy together with computation of taxable income consisting of the copy of the Audited Profit and Loss Account, Balance Sheet together with Auditor's Report for Financial Year (FY) 2013-2014 as Annexure 4 to letter dated 14.10.2015.

29. Although a copy of the Statement of Computation of Income has not been filed before this Court to ascertain whether the aforesaid amount of Rs.3,80,17,011/- was income from net foreign exchange after deduction of Rs.1,43,82,361/- as loss incurred from the foreign exchange from the total foreign exchange earned for a sum of Rs.5,23,99,372/-, it is evident the petitioner has given all the details to the Assessing Officer for passing of Assessment Order.

30. A perusal of the profit and loss account of the petitioner though



does not reveal that the petitioner has given a calculation to the Assessing Officer, what has been given in Note 20 & 21 to the Statement of Profit and Loss for the year ended on 31.03.2014 gives the net gain on account of the foreign exchange fluctuation. There is no quantification or qualification that the total amount of foreign exchange earned was Rs.5,23,99,372/- and a sum of Rs.1,43,82,361/- was reduced to arrive at Rs.3,80,17,011/-. Note 21 reads as under:

21 Other income ended	Year ended	Year
	March 31,2014	March 31,
2013		
Dividend income from current investments		313,867,651
272,266,934		
Service tax refund received		16,231,809
21,922,381		
Net gain on account of foreign exchange fluctuations		38,017,011
14,795,798		
Interest income from fixed deposits with banks		1,268,326
7,890		
Outsourcing income		6,326,221
-		
Other non-operating income		263,905
2,171,690		



W.P.Nos.6635, 27428 & 27432 of 2022

311,164,693

375,974,923

31.In paragraph No.2.6 to the Notes of Account to the financial statement for the year ended on 31.03.2014, the description as far as foreign exchange transactions are concerned, it reads as under:

“2.6 Foreign currency transactions

Foreign exchange transactions are recorded using the exchange rates prevailing on the dates of the respective transactions. **Exchange differences arising on foreign exchange transactions settled during the year are recognised in the profit and loss account for the year.**

Monetary assets and liabilities denominated in foreign currencies as at the balance sheet date are translated at the closing exchange rates on that date; the resultant exchange differences are recognized in the profit and loss account. Non-monetary items which are carried in terms of historical cost denominated in a foreign currency are reported using the exchange rate at the date of the transaction.”

32.The particulars of the unrealized foreign exchange net loss has been detailed below in cash flow statement for the year ended March 31, 2014.



W.P.Nos.6635, 27428 & 27432 of 2022

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A	Cash flow from	Year ended	Year
ended	operating activities	March 31,2014	March 31,
2013			
	Profit before taxation		1,089,788,241
876,005,204			
	<i>Adjustments for:</i>		
	Depreciation and		
	amortisation		211,567,765
162,356,032			
	Employee stock		
	compensation expenses		2,535,223
864,326			
	Unrealised foreign		
	exchanges loss, net	14,382,361	
1,457,999			
	Interest income on		
	deposits	(1,268,326)	
(7,890)			
	Dividend income received		(313,867,651)
(272,266,934)			
	Operating profit before -----	-----	
	working capital changes		1,003,137,613
768,408,737			

33.Thus, there is disclosure in the Statement, Profit and Loss Account for the year ended 31.03.2014. The report of the Independent Auditor under Section 227(3) of the Companies Act, 1956, states that the



petitioner company does not have any accumulated losses at the end of the financial year and also has not incurred any cash losses in the financial year and in the immediately preceding financial year.

34.Thus, it is evident that there is a disclosure in the Audited balance sheet that was filed after it was called for under a notice issued under Section 143(2) of the Act, vide reply dated 14.10.2015.

A	Cash flow from	Year ended	Year
ended	operating activities	March 31,2014	March 31,
2013			
	Profit before taxation		1,089,788,241
876,005,204			
	<i>Adjustments for:</i>		
	Depreciation and		
	amortisation		211,567,765
162,356,032			
	Employee stock		
	compensation expenses		2,535,223
864,326			
	Unrealised foreign		
	exchanges loss, net	14,382,361	
1,457,999			
	Interest income on		
	deposits	(1,268,326)	



W.P.Nos.6635, 27428 & 27432 of 2022

(7,890)

Dividend income received (313,867,651)
(272,266,934)

Operating profit before -----
working capital changes 1,003,137,613
768,408,737

21 Other income Year ended Year
ended March 31,2014 March 31,
2013

Dividend income from
current investments 313,867,651
272,266,934

Service tax refund received 16,231,809
21,922,381

Net gain on account of
foreign exchange fluctuations 38,017,011
14,795,798

Interest income from fixed
deposits with banks 1,268,326
7,890

Outsourcing income 6,326,221
-

Other non-operating income 263,905
2,171,690

375,974,923

311,164,693



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35.Thus, there is no case made out for reopening the Assessment that was completed earlier. Reopening of the Assessment was inspired from a review and a change of opinion by the subsequent officer. Such practice has been deprecated and frowned upon by the Courts.

36.Although the petitioner has resorted to window dressing of the statement of actual of statements filed along with the Statement of Profit and Loss for the year ended 31st March 2014, it cannot be said that the petitioner has not disclosed material. There is a complete disclosure by the petitioner along with the regular returns filed under Section 139 of the Income Tax Act, 1961 on 28.11.2014. The petitioner has also uploaded the hard copy of the same in response to a notice issued under Section 143(2) of the Income Tax Act, 1961 on 28.08.2015.

37.The decision of the Hon'ble Supreme Court in **Calcutta Discount Co. Ltd., Vs. Income-tax Officer**, [1961] 41 ITR 191 (SC) has been followed by the Courts all over the country. The relevant portion from the said decision reads as under:-



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W.P.Nos.6635, 27428 & 27432 of 2022

“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.

It may be pointed out that the Explanation to the sub- section has nothing to do with " inferences " and deals only with the question whether primary material facts not disclosed could still be said to be constructively disclosed on the ground that with due diligence the Income-tax Officer could have discovered them from the facts actually disclosed. The Explanation has not the effect of enlarging the section, by casting a duty on the assessee to disclose " inferences" - to draw the proper inferences being the duty imposed on the Income-tax Officer.”

38.The reasons given for re-opening of the Assessment along with a notice issued under Section 143(2) read with Section 147 of the Income Tax Act, 1961 on 05.05.2021 is also based on the Profit and Loss Account.

39.Thus, there is no scope for re-opening of the assessment which was completed on 28.09.2018 under Section 143(3) read with section



92CA(3) and Section 144C(8) of the Act. Clearly, the reasons given for re-opening of the assessment is inspired from change of opinion.

40. Therefore, the impugned order dated 01.03.2022 disposing of the petitioner's objection for re-opening of the assessment pursuant to the notice dated 25.03.2021 by the 2nd respondent under Section 148 of the Income Tax Act, 1961 for the assessment year 2014-15 is liable to be quashed and hereby quashed. Accordingly, W.P.No.6635 of 2022 has to be allowed and it is allowed.

41. As a consequence:-

(i) Impugned Assessment Order dated 30.03.2022 impugned in W.P.No.27432 of 2022 is pursuant to the impugned order dated 01.03.2022 impugned in W.P.No.6635 of 2022 deserves to be allowed and is allowed.

(ii) The impugned notice dated 30.03.2022 impugned in W.P.No.27428 of 2022 issued under Section 274 r/w Section 271(1)(c) of the Income Tax Act, 1961 is also liable to be quashed. Accordingly, W.P.No.27428 of 2022 is



W.P.Nos.6635, 27428 & 27432 of 2022

also allowed.

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42.In the result, all these Writ Petitions are allowed. Consequently,
the connected Miscellaneous Petitions are closed. No costs.

17.11.2023

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

To

1.Additional / Joint / Deputy / Assistant Commissioner
of Income Tax income-tax Officer,
National e-Assessment Centre, Delhi.

2.Deputy Commissioner of Income-tax,
Corporate Circle 1(1),
Room 611, Wanaparthi Block, VI Floor,
121, Mahathama Gandhi Road,
Nungambakkam, Chennai.

3.Principal Commissioner of Income Tax-I,
121, Mahathama Gandhi Road,
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C.SARAVANAN, J.



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W.P.Nos.6635, 27428 & 27432 of 2022

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W.P.Nos.6635, 27428 & 27432 of 2022

17.11.2023