IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.07.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.19526 of 2023
and
W.M.P.No.18786 of 2023

M/s.Bloom Energy (India) Private Limited,
(PAN : AABCI 2936 F)
North Block, 3rd Floor, IT/BT Park,
Rajaji Nagar, Industrial Estate,
Bangalore – 560 044.
Represented by its Director
Ranganathan Gurunathan ... Petitioner

Vs.

1.The Deputy Commissioner of Income Tax
Corporate Circle – 1(3)/1(2),
6th Floor, Aayakar Bhawan,
Wanarpathy Block,
121, Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034.

2.The Deputy Commissioner of Income Tax
Transfer Pricing Officer – 1(1),
Room 504, 5th Floor, BSNL Building,
Tower – 1, No.16, Greams Road,
Chennai – 600 006.

3.The Centralized Processing Centre (CPC),
Income Tax Department,
Bangalore – 560 500. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, directing the first respondent to accept the returned income and pass appropriate orders nullifying the tax demand raised vide final assessment order dated 20 October 2017 (passed u/s 143(3) read with Section 144C(1) and 92CA of the Act) for the Assessment Year 2013-2014 and also direct the first and second respondents to refund the taxes paid/recovered of INR 1,94,76,963 along with applicable interest under Section 244A of the Act within a specified time.

For Petitioner : Mr.SP.Chidambaram

For Respondents : Mr.Prabhu Mukunth Arun Kumar
Standing Counsel

ORDER

Mr.Prabhu Mukunth Arun Kumar, learned Standing Counsel takes notice on behalf of the respondents.

2. Heard both sides at length. This Writ Petition is being disposed with the consent of the learned counsel for the petitioner, at the admission stage itself, after hearing both the Counsel at length.

3. The petitioner had challenged the Draft Assessment Order passed by the first respondent on 09.12.2016 under Section 143(3) read with Section 144C(1) read with Section 92C(a) of the Income Tax Act (hereinafter referred to as the IT Act) before the Income Tax Appellate Tribunal (ITAT) in ITA.No.2857/Chny-2017, for the Assessment Year 2013-2014.

4. In the aforesaid Assessment Order, the Assessing Officer had accepted the income that was admitted in the return but had however added Transfer Pricing Adjustment and disallowed the expenses claimed towards Research and Development as detailed below:-

Total Income as admitted in the return	Rs.11,65,67,340/-
Add: Transfer Pricing Adjustment	Rs. 2,00,98,068/-
Add: Disallowance of Research and Development expenses	Rs. 1,99,60,831/-
Total income assessed	Rs.15,66,26,239/-

5. The petitioner thus filed an appeal before the Appellate Tribunal. The Appellate Tribunal by its order dated 20.06.2018, had allowed the appeal of the petitioner insofar as the Transfer Pricing Adjustment of Rs.2,00,98,068/- but remitted the case back to the first respondent, as far as

the disallowance of research and development expenses amounting to Rs.1,99,60,831/-.

6. After the order was passed by the Appellate Tribunal, the Office of the first respondent has called upon the petitioner to pay certain outstanding amounts that are due as per its records for the Assessment Years 2013-2014, 2018-2019 and 2021-2022 vide letter dated 07.06.2023.

7. The petitioner has in turn replied to the same on 8th June 2023 and had thereafter rushed to this Court by way of this writ petition for a Mandamus on 28.06.2023.

8. The case of the petitioner is that after an order was passed under Section 254 in the context of Section 92C(a) of the IT Act, the first respondent ought to have passed an Assessment Order, before the expiry of nine months from the end of the financial year. It is submitted that after order under Section 254 was received, order has to be passed by the Chief Commissioner or Commissioner, or as the case may be under Section 153(3) of the IT Act. However, such exercise has not been carried out. Instead, the

respondents have rushed by issuing the impugned demand letter dated 07.06.2023.

9. It is submitted that pursuant to the order of the Appellate Tribunal, the second respondent has to pass an order giving effect to the order of the Appellate Tribunal and thereafter, the first respondent has to pass a fresh Assessment Order, which has not done.

10. This writ petition is opposed by the learned Standing Counsel for the respondents stating there is no clarity as to whether the amount of Rs.11,74,336/- that has been demanded for the Assessment Year 2013-2014 is inclusive of the amount that was added in the Assessment Order dated 09.12.2016, which has been set aside by the Appellate Tribunal. The demand that has been made *prima facie* appears to be contrary to the order passed by the Appellate Tribunal.

11. Be that as it may, this is a fit case for giving a Mandamus to the respondents to consider and pass appropriate orders on the representation dated 08.06.2023 of the petitioner.

12. The petitioner's representation shall be disposed by the first respondent within a period of six weeks from the date of receipt of a copy of this order. The giving effect to order shall be passed by the second respondent within a period of twelve weeks from the date of receipt of a copy of this order. The first respondent shall pass appropriate assessment order within a period of four weeks thereafter.

13. This order shall be communicated to the third respondent and the third respondent. Adjustment of the amounts due in respect of the Assessment Year 2013-2014 shall be only after appropriate orders are passed by the second respondent and by the first respondent in terms of the timelines stipulated as above.

14. This Writ Petition stands disposed of with the above observations. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

07.07.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No
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To

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C.SARAVANAN, J.

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