IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2295 OF 2016

Amdocs Development Centre India Pvt Ltd. ...Petitioner
Versus
The Deputy Commissioner of Income Tax
Circle (1) & Ors. ...Respondents

Mr. Percy Pardiwalla, Senior Advocate (Through V.C.) i/b Mint & Confreres for Petitioner.
Mr. Suresh Kumar for Respondents.

CORAM : K. R. SHRIRAM &
Dr. NEELA GOKHALE, JJ.
DATED : 25th APRIL 2024

P.C. :

1 On 24th February 2016, the following order came to be passed:

> *"1 None appears for the Revenue although served. Mr. Seth, the learned counsel appearing for the Petitioner, on instructions, states that an affidavit of service would be filed by 1st March, 2016.*
>
> *2 This petition challenges a Notice dated 26th March, 2015 issued under Section 148 of the Income Tax Act, 1961, seeking to reopen assessment for the assessment year 2008-2009. The reasons, for reason to believe that income assessed to tax has escaped assessment in support of the impugned notice indicates that as the taxes at source had not been deducted while making the payments for purchase of software to foreign parties, the expenditure cannot be allowed under section 40(a)(ia) of the Act. The Petitioner raised its objection by relying upon a decision of this court in the case of Commissioner of Income-Tax vs. Gem Plus Jewellery India Ltd., [2011] 330 ITR 175 (Bombay), in support of its contention that it being a section 10A unit under Act even if any expenditure is disallowed so as to be added to the income, no tax would still be payable by it. The Assessing Officer white disposing of the objection, does not dispute that the decision of this court in Gem Plus Jewellery India Ltd., (supra) applies to the present facts. However, refuses to follow / apply the same only because the Revenue has filed an Appeal from the decision of this court in Gem Plus Jewellery India Ltd., (supra) to the Apex Court and it is pending.*
>
> *3 In the light of the aforesaid submission of the learned counsel for the Petitioner, we are inclined to admit this petition. However, as the*

> *Revenue is not appearing in spite of the service, we adjourn the hearing of this petition to 2nd March, 2016 so as to pass an order only after appreciating its point of view.*
>
> *4 The Petitioner is directed to once again serve the Respondent Revenue with a copy of the petition alongwith the copy of this order, intimating to the Assessing Officer that the petition is adjourned to 2nd March, 2016.*
>
> *5 Ad-interim relief in terms of prayer clause (d) till further orders. S.O. to 2nd March, 2016."*

2 The order dated 15th January 2016 disposing petitioner's objections to the reopening, the Assessing Officer has proceeded on the basis that assessee is not eligible for deduction / exemption on enhanced profit in case of statutory disallowances since appeal in ***Commissioner of Income Tax Vs. Gem Plus Jewellery India Ltd.***[1] is pending in the Apex Court, therefore it is not a conclusive point to arrive at the contention of assessee.

In ***CIT Central-III Vs. HCL Technologies Ltd.***[2], the Apex Court has confirmed *Gem Plus Jewellery India Ltd.* (Supra).

3 In the circumstances, Rule is made absolute in terms of prayer clause (a), which reads as under:

> *"(a) that this Hon'ble Court be pleased to issue a Writ of Certiorari or a writ in the nature of Certiorari or any other appropriate writ, order or direction under Article 226 and/ or Article 227 of the Constitution of India calling for the records of the Petitioner's case and after examining the legality and validity thereof quash and set aside the Impugned Notice dated 26 March 2015 (Exhibit A) and the Impugned Order dated 15 January 2016 (Exhibit B)."*

(Dr. NEELA GOKHALE, J.) **(K. R. SHRIRAM, J.)**

1 2010 SCC Online Bom 2068
2 (2018) 93 taxmann.com 33 (SC)