IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1090 OF 2024

Kent Engineering India Private Limited ….Petitioner

V/s.

The National Faceless Assessment Centre
and Ors. …Respondents

Mr. Dharan V. Gandhi for Petitioner.
Mr. Suresh Kumar for Respondents.

CORAM : K.R. SHRIRAM &
DR. NEELA GOKHALE, JJ.
DATED : 16th APRIL 2024

P.C. :

1. Since the pleadings in the petition are completed, we have decided to dispose the petition at the admission stage itself.

2. Rule. Rule made returnable forthwith.

3. Petitioner had filed its original return of income for Assessment Year (A.Y.) 2020-21 on 29th January 2021 declaring total income of Rs.51,65,25,390/-. Petitioner's case was selected for scrutiny and the notice dated 29th June 2021 under Section 143(2) of the Income Tax Act, 1961 (the Act) was issued. Since petitioner was also eligible assessee, reference was made for determining Arm's Length Price (ALP) to Transfer Pricing Officer (TPO). The TPO passed an order dated 22nd July 2023 under

Section 92CA(3) of the Act proposing downward adjustment with regard to reimbursement of GIT cost to the tune of Rs.9,41,54,166/-.

4. Draft assessment order under Section 144C(1) of the Act was sent to petitioner on 23rd September 2023 proposing variations. Petitioner was given 30 days on receipt of the draft to respond whether it accepts the proposed variations or objects. Petitioner received draft assessment order through E-mail dated 23rd September 2023 sent from the department at 8.17 p.m. Petitioner did not file any objections. On 16th October 2023 petitioner received another E-mail forwarding the same draft assessment order dated 23rd September 2023. Again petitioner did not reply. Therefore, the Assessing Officer (A.O.) proceeded to pass the assessment order dated 27th December 2023 under Section 143(3) read with Section 144C(3) read with Section 144B of the Act.

5. It is petitioner's case that the assessment order is barred by limitation. Mr. Gandhi submitted that petitioner being eligible assessee in terms of Section 144C of the Act was issued a draft assessment order on 23rd September 2023 which was received by petitioner on the same day. In accordance with the provisions of Section 144C(2) of the Act, petitioner had option of filing objections before the Dispute Resolution Panel (DRP) within one month of receiving draft assessment order and inform the A.O. in terms of Section 144C(2) of the Act. The time therefore would have been

until 22nd October 2023. As petitioner did not file any objections, as provided under Section 144C(3) of the Act the A.O. had to pass the final assessment order on the basis of the draft assessment order. Section 144C(4) of the Act provides that such final assessment order has to be passed within one month from the end of the month in which the period of filing of objections under Section 144C(2) of the Act expires. Thus, the last date to file objections was 22nd October 2023 and therefore by 30th November 2023 Respondent No.1 had to complete the assessment. As the assessment order has been passed only on 27th December 2023, the same is barred by limitation. Mr. Gandhi also relied upon the judgment of this court in ***Renaissance Services BV vs. Deputy Commissioner of Income Tax (International Tax)***[1].

6. Other grounds have been raised and in our view we need not refer to these grounds. The affidavit in reply has been filed through one Mr.Harish S. Kelkar, Assistant Commissioner of Income Tax – 1(2)(1), Mumbai affirmed on 12th April 2024. In the affidavit in reply it is stated that the draft order dated 23rd September 2023 under Section 144C of the Act was sent to assessee only on 16th October 2023 at 1.22 p.m. and that E-mail has bounced. The snap shot of the ITBA portal dated 16th October 2023 has been annexed to the affidavit in reply. But as regards to petitioner's averment in Paragraph No.3.5 of the petition that draft assessment order

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was received by petitioner on 23rd September 2023, the affidavit in reply is totally silent. There is not even a denial. To the petition a copy of the E-mail dated 23rd September 2023 is also annexed. If the A.O. was truthful, he would have annexed snap shot of the ITBA portal of 23rd September 2023 to the affidavit in reply but he has chosen not to do so. In fact, the A.O. has not even annexed the order sheet. Therefore, we have no hesitation in drawing adverse inference against respondent and observe that respondent is being economical with truth.

7. In the circumstances, we will accept petitioner's submission that the draft assessment order was served upon petitioner on 23rd September 2023. The 30 days period provided to file objections under Section 144C(2) of the Act would have expired on 22nd October 2023. Since no communication from petitioner having filed the objections with DRP was sent to the A.O., the last date for passing final assessment order under Section 144C(3)(b) read with Section 144C(4)(b) of the Act would have expired on 30th November 2023. Therefore, the final assessment order dated 27th December 2023 is clearly barred by limitation.

8. Therefore, Rule made absolute. Petition is allowed in terms of prayer clause – (a) which reads as under :

> *(a) that this Hon'ble Court may be pleased to issue a Writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate Writ, Order or direction, calling for the records of the Petitioner's case and after going into the legality and propriety thereof, to quash and set aside the final assessment order passed*

> *under section 143(3) read with section 144C(3) and 144B of the Act dated 27.12.2023 (Exhibit C), notice of demand in Form No.7 dated 27.12.2023 (Exhibit D) and the show cause notice dated 27.12.2023 for levy of penalty u/s 274 r.w.s. 270A of the Act (Exhibit E).*

9. Petition disposed.

10. Copy of this order be sent to the Principal Chief Commissioner of Income Tax, Aayakar Bhavan, Mumbai – 400 020.

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