IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	24.07.2023
Pronounced on	05.02.2024

CORAM

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

W.P.No.953 of 2020 and W.P.Nos.16491 & 16497 of 2021
and
W.M.P.Nos.1158 & 1160 of 2020 and 17460, 17461 & 17469 of 2021

M/s.Summit Online Trade Solutions Limited,
Represented by its authorised signatory Mr.Pramodh Gadiya,
Shop No.6, Ground Floor, Rayala Towers,
No.781-785, Anna Salai,
Mount Road,
Chennai – 600 002,
Now At: No.6, Parasu Street,
Backside, Kilpauk,
Chennai – 600 010.. ... Petitioner in all W.Ps.

Vs.

1. The Deputy Commissioner of Income Tax,
   Central Circle 1(3),
   The Director General of Income Tax,
   New Income Tax Building, Third Floor,
   New No.46, Mahatma Gandhi Road,
   Nungambakkam,
   Chennai.

2. The Principal Commissioner of Income Tax,
Central Circle,
The Director General of Income Tax,
New Income Tax Building, Third Floor,
New No.46, Mahatma Gandhi Road,
Nungambakkam,
Chennai. ... Respondents in all W.Ps.

Prayer in W.P.No.953 of 2020: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records on the file of the first respondent and quash the impugned order in PAN AALCS8098J in DIN & Letter No.ITBA/AST/F/17/2019-20/1023775851(1) dated 10.01.2020 along with the impugned notice dated 03.12.2019 in notice number ITBA/AST/S/148/2019-20/1021538360(1) issued under Section 148 of the Income Tax Act for the assessment year 2014-2015.

Prayer in W.P.No.16491 of 2021: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records on the file of the first respondent and quash the impugned order dated 16.07.2021 passed by the first respondent in PAN AALCS8098J bearing Order No.ITBA/AST/F/17/2021-22/1034255608(1) for the Assessment Year 2015-16 and the original impugned notice issued under Section 148 of the Income Tax Act in Notice No.ITBA/AST/S/148/2019-20/1026865472(1) dated 23.03.2020.

Prayer in W.P.No.16497 of 2021: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records on the file of the first respondent and quash the impugned order dated 30.06.2021 passed by the first respondent and quash the impugned notice dated 30.06.2021, issued under Section 143(2) of the Income Tax Act, 1961 by the first respondent in PAN AALCS8098J bearing DIN No. ITBA/COM/M/17/2021-22/1033961969(1) for the Assessment Year 2015-16.

For Petitioner (in all W.Ps.)	: Mr.R.V.Easwar learned Senior Counsel for Mr.N.V.Balaji
For Respondents (in all W.Ps.)	: Mr.A.P.Srinivas Senior Standing Counsel

COMMON ORDER

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

2. In W.P.No.953 of 2020, the petitioner has challenged the Impugned Order dated 10.01.2020 passed by the first respondent disposing of the objection of the petitioner against reopening of the assessment vide

notice dated 03.12.2019 under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as IT Act, 1961) for the Assessment Year 2014-2015.

3. By the Impugned Order dated 10.01.2020, the first respondent has justified the reopening of the assessment for the Assessment Year 2014-2015 with the following observation:-

> "*2. The first objection of the assessee is that reopening without fresh material is invalid. Fresh material is available in this case in the form of the order of the Hon'ble Subrement Court passed on 24.10.2013 wherein Service tax refund of Rs.77.80 Crores was determined. Therefore, the objection of the assessee is not valid.*
>
> *3. Another objection raised by the assessee is that there is change of opinion. In this connection, it is to be noted that there is no discussion about the assessability of the amount of Rs.77.80 crores in any of the proceedings. The only discussion was in the course of assessment for AY 2015-16 wherein the assessee's claim of reduction of the refund amount from income admitted during the search was rebutted. The rebuttal was for the reason that the issue of service tax refund was never a subject matter at the time of admission of income and the admission was made on account of account of returned or unsold paper lottery tickets. Thus the claim of the assessee that there is a change of opinion is not acceptable.*

4. Another objection raised by the assessee that there is no failure on its part to in disclosing truly and fully material evidences necessary for the purpose of assessment. The assessee has stated that, the order of the Supreme Court has been submitted during the course of assessment proceedings itself. In this connection, the records for the AY 2014-15 is verified, and it is seen that there are no submissions and no correspondence with regard to the order of the Supreme Court. Therefore, this objection of the assessee is also not tenable.

5.The assessee has objected for not recording the satisfaction there is failure on the part of the assessee. In the satisfaction, there is a clear mention that the amount of Rs.77.80 crores has not been offered to tax during the year. This establishes the failure on the part of the assessee. Therefore, this ground of the assessee is also rejected.

6. Another objection, is that there is no reason to believe but there is only suspicion. In this connection, it is reiterated that in the satisfaction, there is a clear mention that the amount of Rs.77.80 crores has not been offered to tax during the year and the reason to believe has been recorded. This clearly is a belief and by no stretch of imagination can it be called as a case of suspicion and the objection of the assessee is not acceptable.

7. Another objection made by the assessee was that the satisfaction of the PCIT is merely to meet the statutory requirement and not an objective satisfaction based on material on record. In this connection, the statutory requirement being approval of the PCIT is met. Further, with regard to the objective satisfaction, the

PCIT has clearly written that "perused the reasons above and I am satisfied it is a fit case for reopening u/s 147 of the IT Act. Approval is granted for issue of notice u/s 148". Thus it is evident that objective satisfaction of the PCIT is very much there. Therefore the objection of the assessee on this count is also not acceptable and is rejected.

8. The objections filed by the assessee against the reopening of assessment is disposed off accordingly."

4. In W.P.No.16497 of 2021, the petitioner has challenged the impugned notice dated 30.06.2021 issued under section 143 (2) of the IT Act, 1961 for the Assessment Year 2015-2016.

5. In W.P.No.16497 of 2021, the petitioner has challenged the Impugned Order dated 16.07.2021 passed by the first respondent disposing of the objection of the petitioner against reopening of the assessment for the assessment year 2015-2016 vide notice dated 23.03.2020 issued under Section 148 of the IT Act, 1961 for the Assessment Year 2015-2016.

6. By the Impugned Order dated 16.07.2021, the first respondent has justified the reopening of the assessment with the following observation:-

> "*2. The first objection of the assessee is that reopening has been made without any fresh material. Fresh material was available in this case in the form of the order of the Hon'ble Supreme Court passed on 24.10.2013, wherein, service-tax refund of Rs.77.80 crores was determined. This Supreme Court order was relatable to the income admission for the asst. year 2015-16 of Rs.200 crores. The omission in the income admission by the assessee of Rs.200 crores over and above that in the certified accounts was not dealt in the asst. order, with reference to the Supreme Court order. Therefore, this objection of the assessee is not valid.*
>
> *3. The next objection raised by the assessee is that there is change of opinion. In this connection, it is to be noted that there is no discussion about the assessability of the amount of Rs.200 crores which was offered over and above that in the certified accounts, during the course of search. The discussion in the asst. order about the offer made during the course of search has no reference to the certified accounts. In other words, no discussion in the asst. order that the offer ought to be over and above that declared in the certifled accounts. Thus, there was no opinion on the above aspect in the asst. order and therefore, there is no question of change of opinion for there was no opinion formed in the first instance.*
>
> *4. Another objection raised by the assessee is that*

there is no failure on its part to disclose fully and truly material evidences necessary for the purpose of assessment. The assessee has not disclosed the amount of Rs.200 crores offered during the course of search which ought to be over and above the certified accounts. Therefore, there is failure on the part of the assessee to disclose fully and truly material evidences necessary for the purpose of assessment. Further, it may be noted that the reopening has been done within four years from the end of the relevant assessment year and therefore, recording of failure on the part of the assessee to disclose fully and truly material evidences is not a sine qua non for reopening in such a case.

5. The assessee has also objected for not recording the satisfaction that there is failure on the part of the assessee. In the satisfaction note, there is a clear mention that the assessee failed to include in its return of income, the additional income of Rs.200 crores admitted at the time of search.

6. Another objection is that there is no reason to believe but there is only suspicion. In this connection, it is reiterated that in the satisfaction note, there is a clear mention that the amount of Rs.200 crores has not been offered to tax for the relevant assessment year and the reason to believe has been recorded. This clearly is a belief and by no stretch of imagination, can it be called as a case of suspicion and the objection of the assessee is not acceptable.

7. As regards, the objection quoting 3rd proviso to sec. 147, it may be noted that the reopening is with regard to the omission to tax the amount of Rs.200 crores offered in the course of search as over and above the certified accounts, and the already taxed amount of

Rs.80 crores has no connection with the certified accounts.

8. Another objection made by the assessee was that the satisfaction of the JCIT was mechanical. In this connection, it may be noted that the statutory requirement being approval of the Range head is met. Further, with regard to the satisfaction, it has been recorded by the Range head that 'perused the reasons recorded by the AO and materials available on record. It is found that Rs.119.46 crores escapes assessment. Satisfied with the reasons recorded by the AO. Approved. From the above recording, it may be apparent that the approval was not mechanical but on an objective basis. In this connection, it may also be noted that already additional Income of Rs.80.54 crores was added to the total income in the assessment order out of the declared amount during the search of Rs.200 crores, resulting in the escapement of income of Rs. 119.46 crores.

9. In the light of the foregoing, the objections filed by the assessee against the reopening of assessment is disposed off, accordingly.

Further, as requested by the assessee, vide letters cited under reference, copies of the following documents are enclosed:

a. Copy of material available on record being the basis for reopening enclosed as Annexure-A.

b. Satisfaction note of the relevant statutory authority and copy of prior approval from PCIT is enclosed as

Annexure-B"

7. The reasons for reopening of the assessment for the Assessment Year 2014-2015 vide communication dated 10.12.2019 and for the Assessment Year 2015-2016 vide communication dated 26.8.2020 reads as under:-

Assessment Year 2014-2015 Vide Letter dated 10.12.2019	**Assessment Year 2015-2016 vide Letter dated 26.08.2020**
Reasons for reopening of the assessment	
"With reference to your letter wherein you have sought for the reasons for reopening of assessment in your case for the Assessment Year 2014-2015, the same is communicated as under: *"In this case, Hon'ble Supreme Court delivered a judgment on 24.10.2013 wherein, directions were give to the Service Tax Authorities to refund the service tax amount to the assessee. It is ascertained that the assessee is to receive service tax refund to the tune of Rs.77.80 Crores"* *Consequent to the order of the Hon'ble Supreme Court, it is evident that the amount of Rs.77.80 Crores has accrued during the financial year 2013-2014, the same has to be taxed in the relevant Assessment Year 2014-2015. On going through the*	*"In this case, during the course of search, the assessee company admitted Rs.200.00 crores as additional income for the AY 2015-16. On going through the return of income filed for this year, it is seen that the assessee has admitted an amount of Rs.273.46 crores. This amount of Rs.273.46 crores represents the taxable income as per the certified accounts and does not include the additional income of Rs.200.00 crores admitted at the time of search. In the assessment, instead of an addition of Rs.200.00 crores, an addition of Rs.80,53,26,740/- only was made on account of variation between the amount admitted during the course of search and the amount admitted in the return of income. The difference amount of Rs.119,46,73,260/- has escaped assessment."*

records for the Assessment Year 2014-2015, it is seen that the said amount of Rs.77.80 Crores has not been offered to tax during the year. Therefore, I have reason to believe that income has escaped assessment for Assessment Year 2014-2015 within the meaning of explanation to Section 147 of the IT Act, 1961" *2. A satisfaction as above was recorded by the undersigned and the same was endorsed and approved by Pr.CIT, Central-1, Chennai on 29.11.2019."*	

8. The petitioner is a company engaged in trading of sale of lotteries through online as well as through physical means. A search was conducted under Section 132 of the IT Act, 1961 on 20.11.2014 during the Financial Year 2014-2015. During the course of search, the petitioner has also given letters dated 09.01.2015, 16.01.2015 and 11.04.2016.

9. At the time of inspection, the Senior Executive of the petitioner gave a statement under Section 132(4) of the IT Act, 1961 and offered to add a sum of Rs.203,00,00,000/- (Rupees Two Hundred and Three Crore Only) as taxable income of the entire group.

10. In letter dated 09.01.2015 addressed to the Deputy Director of Investigation, the petitioner stated and reiterated as follows:-

> "*3. The said additional income will also include the income to be offered in the cases of Summit Online Trade Solutions Private Limited and Individuals, firms and associated concerns of the Group. The Assessee wise bifurcation will be furnished within 4 to 5 days. The additional income offered in case of Summit Online Trade Solutions Private Limited will be over and above the income offered in the Assessment Year 2014-2015 (which will be more or less equal in the current year also). It is further requested that the Telescoping of the Income Declared will be allowed.*"

11. This was followed by another letter dated 16.01.2015 to the Deputy Director of Investigation. The content of the letter dated 09.01.2015 which has been reproduced above was also reiterated in the said letter dated 16.01.2015, wherein it was stated as follows:-

> "*4. As stated in our letter dated 09.01.2015, we have submitted that the additional income will cover up all issues arising on account of stock, cash in hand, various omissions, commissions, assets, jewellery, valuables, documents and on any instances where the search party is not satisfied on the explanations and clarifications given by us on any issues may be on account of large number of wholesellers, agents,*

distributors, sub agents, retailers in their own capacity and enormous volume of transactions etc."

12. The petitioner filed the returns for the Assessment Year 2014-2015 on 27.09.2014. For the Assessment Year 2015-2016, the return was filed on 30.09.2015. For the respective Assessment Years, the petitioner had returned the following amounts as the taxable income:-

Assessment Year	Amount
2014-2015	Rs.153 Crores
2015-2016	Rs.273.46 Crores

13. As against an offer that was made in their communication dated 05.01.2015 and 16.01.2015, this led to series of correspondences being exchanged between the petitioner and the Assessing Officer.

14. Earlier, the issue relating to refund of service tax was decided by the Honourable Supreme Court on 24.10.2013 during the Financial Year 2013-2014 for the relevant Assessment Year 2014-2015.

15. In the statement that was given on 09.01.2015, the petitioner undertook to pay Rs.203 crores over and above the amount offered for the Assessment Year 2014-2015 over and above the income for the Assessment

Year 2015-2016 for the entire group. Paragraph 2 of the letter dated 09.01.2015 reads as under:-

> "*However, to cover unintended omissions and solely with the view to cooperate with the department and to buy peace and to bring finality in the matter and to the queries and explanations not answered to the satisfaction of the department, we hereby agree to offer a sum of Rs.203,00,00,000/- (Rupees Two Hundred and Three Crore Only) as additional income for the financial year 2014-2015 i.e. Assessment Year 2015-2016 for the entire group.*"

16. These proceedings ultimately culminated in assessment orders dated 29.12.2017 under section 143(3) read with section 153A read with section 92CA(6) of the IT Act, 1961 for the respective assessment years.

17. The income that was returned and the income that was added to the respective assessment years and the tax payable by the petitioner as per the aforesaid assessment orders are detailed as under:-

	Assessment year 2014-2015	**Assessment year 2015-2016**
Income returned under section 139 of the Income Tax Act, 1961.	Rs.153,79,75,580	Rs.2,76,87,85,099
Income determined in the respective assessment orders both dated 29.12.2017.	Rs.154,05,70,928	Rs.354,80,61,440

Tax payable by the petitioner. Under the respective assessment orders both dated 29.12.2017.	Rs.12,70,300	Rs.36,79,45,730

18. As far as the Assessment Year 2015-2016 is concerned, the petitioner preferred a further appeal to the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) by an order dated 20.02.2019 partly allowed and partly dismissed the appeal of the petitioner. Relevant portion of the said order reads as under:-

> "*12. In view of the afore-mentioned discussions that have highlighted that the key persons of the appellant company have failed to offer explanation in respect of discrepancies relating to prize winning tickets and unsold tickets [which cannot be construed as inconsequential, especially in the light of the volume and size of the business operations of the appellant]; the key personnel have admitted, rather admitted repeatedly, undisclosed income, both in the form of sworn statements u/s.132(4) of the Act and in the form of consciously drafted letters addressed to the investigation authorities; that they prevented the investigation authorities from carrying out detailed working by their repeated offer; that no duress or coercion was substantiated; that the explanation for the shortfall in admission attributed to non-receipt of service tax is not plausible, for the said issues was not the subject matter of search and investigation; that the doctrine of estoppel applies to the appellant's case; and in view of the judicial approval accorded by the Hon'ble jurisdictional High Court in the case of B.Kishore Kumar (supra) as endorsed by the Hon'ble Apex Court, I am of the considered view that the*

grounds of the appellant on the addition of Rs.80,53,26,740/- are liable for dismissal and of the view that no interference by the undersigned is called for in respect of the AO's addition. Accordingly, the grounds are dismissed."

19. The Income Tax Appellate Tribunal in further appeal in ITA No.1081/Chny/2019, allowed the petitioner's appeal insofar as addition of Rs.77.80 Crores out of Rs.80,53,26,740/- and held that if at all service tax refund of Rs77,80,00,000/- was concerned, it was to be brought to the tax during the Assessment Year 2014-2015.

20. The Income Tax Appellate Tribunal thus concluded that service tax refund did not accrue to the petitioner during the assessment year under consideration i.e., assessment year 2015-2016 in view of the decision of the Honourable Supreme Court rendered on 24.10.2013 and therefore the assessing officer could not hold the benefit of service tax refund accrued during the Assessment Year 2015-2016 automatically.

21. The Tribunal further observed that the petitioner had also given an undertaking before the assessing officer by way of an affidavit that on the actual receipt, tax will be offered and therefore the addition of rupees Rs.77.80 Crores was not justified and thus allow the petitioner's appeal. As

far as the balance amount of Rs.2,73,26,740 [80,53,26,740 -77,80,00,000], the petitioner's appeal was dismissed. Relevant portion of the order held as under:-

> "*4.2 If the Department is promted to bring to tax of the Service Tax Refund of Rs.77.80 Crores in view of the decision of the Hon'ble Supreme Court which was delivered on 24.10.2013, the same should have been taxed in the relevant to the assessment year 2014-2015 or it can be taxed as and when the said sum or any part thereof is actually received by way of refund from the concerned authorities. In fact, it was the argument of the Id. Counsel that before completion of the assessment on 29.12.2017, the assessee has given an undertaking in the form of an affidavit dated 28.12.2017 to offer for taxation of the receipt of service tax refund as and when it was actually received. Moreover, despite the Hon'ble Supreme Court delivered the judgment on 24.10.2013, the assessee could not get the refund till the date of passing assessment order or the Assessing Officer has not given any findings that the assessee has received the service tax refund. Further, the Assessing Officer has not discussed anything in the assessment order of receipt of service tax refund during the assessment year under consideration. Further, the service tax refund was not accrued to the assessee in the assessment year under consideration in lieu of the Hon'ble Supreme Court's decision. The provisions of Section 41(1) of the Act warrant taxation of the benefit obtained, whether in cash or in any other manner whatsover or accrued. By virtue of the judgement of the Hon'ble Supreme Court delievered on 24.10.2013 towards service tax refund, the Assessing Officer cannot held that the benefit of service tax refund accrues to the assessee in the assessment year 2015-*

2016 automatically. Moreover, the assessee also filed an undertaking before the Assessing Officer by way of an affidavit that the actual receipt of the service tax refund will be offered to tax, we are of the considered opinion that the Assessing Officer was not factually and legally correct to bring the same to tax in the assessment year in which the assessee has not actually received the refund or accrued. Under the above facts and circumstances, the addition to the extent of Rs.77.80 Crores made by the Assessing Officer to bring the service tax refund under tax net stands deleted.

4.3 With regard to the balance addition of Rs.2,73,26,740/- [Rs.80,53,26,740-Rs.77,80,00,000] towards variation in additional income admitted, the Id. Counsel for the assessee has not advanced any argument or the assessee has furnished any material evidence on record. When the assessee was asked to explain with regard to the short fall in income that was admitted under Section 132(4) of the Act being Rs.80,53,26,740/- before the Id.CIT(A), the assessee has explained about service tax refund of Rs.77.80 Crores only and no reply was given on the difference amount of Rs.80,53,26,740-Rs.77,80,00,000. Accordingly, the balance addition of Rs.2,73,26,740/- stands confirmed."

22. It is in this background the impugned orders and notices have been issued seeking to reopen the assessment for the Assessment Year 2014-2015, the petitioner filed Return of Income on 27.09.2014 and admitted a total income of Rs.153,79,75,580/-. The revised returns that was

filed by the petitioner on 05.03.2016 after the statement was given on 09.01.2015. Revised return filed on 05.03.2016 for the Assessment Year 2014-2015 was contrary to the Letter dated 09.01.2015 and 16.01.2015.

23. The learned counsel for the petitioner has relied upon the following decisions:-

i. ***Commissioner of Income-Tax, Delhi*** *vs.* ***Kelvinator of India Limited****, [2010] 187 Taxman 312 (SC);*

ii. ***Commissioner of Income-Tax*** *vs.* ***Kelvinator of India Limited****, [2002] 123 Taxman 433 (Delhi);*

iii. ***Calcutta Discount Company Limited*** *vs.* ***Income Tax Officer****, [1961] 41 ITR 191 (SC);*

iv. ***Jindal Photo Films Limited*** *vs.* ***Deputy Commissioner of Income-Tax****, [1999] 105 Taxman 386 (Delhi);*

v. ***Principal Commissioner of Income Tax-6, Chennai*** *vs.* ***Santech Solutions Private Limited,*** *[2018] 97 taxmann.com 179 (Madras);*

vi. ***Sterlite Industries (India) Limited*** *vs.* ***Assistant Commissioner of Income Tax****, [2009] 178 Taxman 409 (Madras);*

vii. ***Madras Suspensions Limited*** *vs.* ***Deputy Commissioner of Income-Tax, Company Circle-1, Madurai****, [2017] 88 taxmann.com 256 (Madras);*

viii. ***Commissioner of Income-Tax, Chennai*** *vs.* ***Schwing Stetter India Private Limited****, [2015] 61 taxmann.com 19 (Madras);*

ix. ***Commissioner of Income-Tax*** *vs.* ***RPG Transmissions Limited****, [2014] 48 taxmann.com*

57 (Madras);

x. ***Asianet Star Communications Private Limited*** *vs.* ***Asianet Star Communications Private Limited,*** *[2019] 106 taxmann.com 293 (Madras).*

24. The learned Senior Standing Counsel for the respondents has relied on the decisions of the Hon'ble Supreme Court in the following cases:-

i. ***Commissioner of Income Tax*** *vs.* ***P.V.S.Beedies Private Limited****, (1998) 9 SCC 272;*

ii. ***M/s.Phool Chand Bajrang Lal & Another*** *vs.* ***Income Tax Officer & Another****, (1993) 4 SCC 77*

25. It is also noticed that against the order of the Income Tax Appellate Tribunal both the petitioner and the Department are in appeal in the following cases:-

Assessee	T.C.A.No.164 of 2021
Department	T.C.A.No.445 of 2020

26. Similarly, return that was filed on 30.09.2015 for the Assessment

Year 2015-2016 by the petitioner is contrary to the letter that was issued by the petitioner on 11.7.2020. Content of which has been extracted in the reasons given for reopening of the assessment for the Assessment Year 2015-2016 vide communication dated 26.08.2020.

27. Thus, the income for the respective assessment years have escaped assessment. Returns were filed contrary to the undertaking given by the petitioner pursuant to search that was commenced under section 132 of the IT Act, 1961 on 20.11.2014.

28. Therefore, I do not find any merit in these writ petitions. These writ petitions are therefore liable to be dismissed and are accordingly dismissed. No costs. Consequently connected miscellaneous petitions are closed.

05.02.2024

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

1. The Deputy Commissioner of Income Tax,
   Central Circle 1(3),
   The Director General of Income Tax,
   New Income Tax Building, Third Floor,
   New No.46, Mahatma Gandhi Road,
   Nungambakkam,
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2. The Principal Commissioner of Income Tax,
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