IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.09.2024

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.1288 and 9446 of 2022
and
W.M.P.Nos.1395, 15690 and 9193 of 2022

M/s.AVO Carbon Holdings LLC,
A Company Incorporated Under the Laws
of United States of Amercia
2771, Centrelville Road Suite 400
999999, Foreign United States,
Represented by the Authorized Signatory
Mr.M.S.Manoj
No.99, 3rd West Street,
Metha Nagar, Kundrathur,
Chennai – 600 069. ... Petitioner in both W.Ps

Vs.

The Deputy Commissioner of Income Tax,
International Tax 1(1), Chennai
BSNL Tower, No.16, Greams Road,
Chennai – 600 006. ... Respondent in W.Ps

Prayer in W.P.No.1288 of 2022: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records on the file of the respondent in PAN.AAJCA5998D and quash the impugned notice in ITBA/AST/S/148/2020-21/1031552162(1) dated 17.03.2021 issued under Section 148 of the Income Tax Act, 1961 and the consequential proceedings in ITBA/AST/F/17-2021-22/1038714585(1) dated 13.01.2022.

Prayer in W.P.No.9446 of 2022: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records on the file of the respondent in PAN.AAJCA5998D and quash the impugned order in ITBA/AST/S/144C/2021-22/1042381993(1) dated 31.03.2022 for the A.Y.2014-15.

For Petitioner (in both W.Ps) : Mr.R.Sivaraman

For Respondent (in both W.Ps) : Mr.B.Ramanakumar
Senior Standing Counsel

COMMON ORDER

These Writ Petitions pertains to the Assessment Year 2014-2015. In W.P.No.1288 of 2022, the petitioner has challenged the impugned notice dated 17.03.2021 issued under Section 148 of the Income Tax Act, 1961 and the speaking order dated 13.01.2022. By the impugned order, the objections for reopening of the assessment that was completed earlier on 28.07.2016 has been justified by overruling the objections of the petitioner. Since this Court had only granted stay of recovery proceedings. The respondent has proceeded to pass an Assessment order dated 31.03.2022, which is impugned in W.P.No.9446 of 2022.

2. The arguments that were advanced in W.P.No.26764 of 2021 were adopted by the petitioner in these two writ petitions as well.

3. Explaining the case further, the learned counsel for the petitioner would submit that initially after the returns were filed on 29.11.2014 notices were issued under Section 142(1) of the Income Tax Act, 1961 for the Assessment Year 2014-2015 on 08.04.2016, wherein, the issue arising out of the agreement between the petitioner and its Indian subsidiary was a subject matter of discussion.

4. Specifically, it is submitted that by a notice dated 08.04.2016 issued under Section 142(1) of the Act, the petitioner was called upon to furnish the details on or before 19.04.2016 on the following issues:

> (i)Furnish copy of management agreement.
>
> (ii)Furnish details of scope of services how does your service does not make available any knowledge/skill/experience.
>
> (iii)Furnish computation of management fees.
>
> (iv)Furnish break up management fees, Reasons for Non-deduction of TDS(if any).

5. It is submitted that this issue was also considered at length by the Assessing Officer while passing the Assessment Order under Section 143(3) read with Section 144C(4) of the Income Tax Act, 1961 vide order dated 28.07.2016. It is therefore submitted that reopening of the assessment that was completed purely inspired from change of opinion and thus contrary to the decision of the Hon'ble Supreme Court in the case of ***CIT*** *Vs.* ***Kelvinator of India Ltd*** *reported in (2010) 320 ITR 561.*

6. The learned Senior Counsel for the respondent has taken the

same defence in W.P.No.26764 of 2021 for the Assessment Year 2013-2014. The facts are not materially different in above case and in the present cases. The Assessment order itself has discussed the amount of Rs.4,01,46,424/- in the Assessment Order dated 28.07.2016 passed under Section 143(3) read with Section 144C of the Income Tax Act, 1961. Thus, the reasons given for reopening of the assessment cannot be justified. Consequently, the impugned notice dated 17.03.2021 and the consequential speaking order dated 13.01.2022 impugned in W.P.No.1288 of 2022 is liable to be quashed. Consequently, the Assessment order dated 31.03.2022 impugned in W.P.No.9446 of 2022 is also liable to be quashed.

7. Accordingly, these Writ Petitions stand allowed. No costs. Consequently, connected writ miscellaneous petitions are closed.

24.09.2024

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

The Deputy Commissioner of Income Tax,
International Tax 1(1), Chennai
BSNL Tower, No.16, Greams Road,
Chennai – 600 006.

C.SARAVANAN, J.

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