IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.4785 and 4788 of 2022
and
W.M.P.Nos.4892, 4894, 4895 and 4896 of 2022

Changepond Technologies Private Limited,
Represented by its Chairman & CEO
Shri Subramanian Ramachandran ... Petitioner in both W.Ps

Vs.

1.The Additional/Joint/Deputy/Assistant Commissioner of Income Tax/Income Tax Officer,
National Faceless Assessment Centre,
Delhi.

2.The Deputy Commissioner of Income Tax,
Corporate Circle – 1(1),
R.No.611, Wanaparthy Block,
No.121, M.G.Road,
Nungambakkam, Chennai – 600 034. ... Respondents in both W.Ps

Prayer in W.P.No.4785 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 of the case leading to the issue of Impugned Notice under Section 148 of the Act dated 29.03.2021 by the second respondent in DIN & Notice No: ITBA/AST/S/148/2020-2021/1031882567(1) dated 29.03.2021 to quash the same.

Prayer in W.P.No.4788 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 of the case on the file of the first respondent and the impugned consequential proceedings rejecting the objections in DIN & Letter No: ITBA/AST/F/142(1)/2021-2022/1040014376(1) dated 22.02.2022 passed by the first respondent for the Assessment Year 2017-2018 to quash the same.

For Petitioner (In both W.Ps)	:	Mr.Vikram Vijayaraghavan for M/s.Subbaraya Aiyar Padmanabhan & Ramamani
For Respondents (In both W.Ps)	:	Mr.B.Ramana Kumar Senior Standing Counsel

COMMON ORDER

These Writ Petitions are of the year 2022.

2. By this Common Order, both the writ petitions are being disposed of.

3. The petitioner has challenged the Impugned Notice dated 29.03.2021 issued by the second respondent under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') for the Assessment Year 2017-2018 and the Impugned Order bearing DIN & Letter No: ITBA/AST/F/142(1)/2021-2022/1040014376(1) passed by the first respondent on 22.02.2022.

4. The specific case of the petitioner is that the assessment was completed earlier on 17.12.2019 under Section 143(3) of the Act wherein, the claim of the petitioner in respect of bad debts and advance written off were not disturbed.

5. It is submitted that the petitioner was also issued with a notice under Section 142(1) of the Act on 30.11.2019 and the other details which includes the full details of bad debts and advance written off.

6. Learned counsel for the petitioner submits that on 09.12.2019, a detailed note was also filed by the petitioner on the bad debts and advance written off. Despite the same, the second respondent has proceeded to issue the Impugned Notice under Section 148 of the Act on 29.03.2021.

7. It is submitted that the reasons given for reopening the Assessment under Section 143(2) Notice dated 28.07.2021 merely states that on perusal of profit and loss account under the head other expenses, the assessee has claimed Rs.1,33,21,458/- towards advance written off as the expenditure claimed is not an allowable expenditure.

8. It is further submitted that this is impermissible and is contrary to the decision of the Hon'ble Supreme Court in **Commissioner of Income Tax** Vs. **Kelvinator of India Ltd.,** (2010) 320 ITR 561 SC which affirms the decision of the Full Bench of the Delhi High Court in **Commissioner of Income Tax** Vs. **Kelvinator of India Ltd.,** (2002) 256 ITR 001 (Del.).

9. That apart, the learned counsel for the petitioner would submit that almost an identical issue came up before the Division Bench of the Bombay High Court in **ICICI Securities Limited** Vs. **Assistant Commissioner of Income-tax 3(2), Mumbai** in W.P.No.1919 of 2006 and that the writ petition was allowed by the Division Bench of the Bombay High Court by its order dated 22.08.2006.

10. A specific reference was made to Paragraph 7 wherein, the Court held as under:-

> ***"7. In the facts of the present case, there is nothing new which has come to the notice of the revenue. The accounts had been furnished by the Petitioner when called upon. Thereafter, the assessment was completed under Section 143(3) of the Income Tax Act. Now, on a mere relook, the officer has come to the conclusion that the income has escaped assessment and he is of course justified in his analysis. In our view, this is not something which is***

permissible under the proviso to Section 147 of the Income Tax Act which speaks about a failure on the part of the assessee to make a proper return. In the present case, no such case is made out on the record."

11. It is further submitted that the above decision of the Division Bench of the Bombay High Court was also affirmed by the Hon'ble Supreme Court in **Assistant Commissioner of Income-tax** Vs. **ICICI Securities Primary Dealership Ltd.,** [2012] 24 taxmann.com 310 (SC).

12. On the other hand, the learned Senior Standing Counsel for the respondents would submit that these writ petitions are premature and the impugned proceeding is not merely based on the change of opinion. It is submitted that the petitioner can very well participate in the remand proceedings pursuant to the Impugned Notice and the Impugned Order and therefore submits that these writ petitions are liable to be dismissed.

13. That apart, the learned Senior Standing Counsel for the respondents would place reliance on Explanation 1 to Section 147 of the Act, stood prior to 01.04.2021. As per which, it is submitted that, a mere production before the Assessing Officer of the account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing

Officer will not necessarily amount to disclosure within the meaning of proviso to Section 147 of the Act.

14. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents.

15. The records reveal that the petitioner had furnished all the materials for completing the assessment on 17.12.2019 under Section 143(3) of the Act.

16. In fact in response to the notice dated 30.11.2019 issued under Section 142(1) of the Act, wherein, the petitioner was called upon to furnish the following details:-

> "Sir/Madam/M/s.
> In connection with the assessment for the assessment year 2017-18 you are required to:
> a) Furnish or cause to be furnished on or before 03/12/2019 at 10:30 AM the accounts and documents specified overleaf.
> b) Furnish and verified in the prescribed manner under Rule 14 of IT Rules 1962 the information called for as per annexure and on the points or matters specified therein on or before 03/12/2019 at 10:30 AM.
> c) The above mentioned evidence/information is to be furnished online electronically in 'E-Proceeding' facility through your account in 'e-filing' website of Income Tax Department.
> d) Para(s) (a) to (c) are applicable if you have an account in e-filing website of Income Tax Department. Till such an account is

created by you, assessment proceedings shall be carried out either through your e-mail account or manually (if e-mail is not available).

e) in cases where order has to be passed under section 153A/153C of the Income Tax Act, 1961 read with section 143(3) assessment proceedings would be conducted manually.

Annexure

With reference to the assessment proceedings for the AY 2017-18, you are requested to file the following details called for vide notice uls 142(1) dated 17/08/2019. Also provide the following details:

1. Other Expenses:

- Bad debts - 1.33.21.458/-, whether offered to income in earlier year.
- Advance written off - 48,87,440/- Provide details.
- Note: Nature of advance - party wise breakup.
- Purchase of software – 43,83,322/-.
- Note: Copies of invoices (> 10 lakhs), Nature of each softwares.

2. Note 39: Travelling (foreign Currency) – 1,60,96,806/-.

- > 10 lakhs. Name - relationship with company, amount, nature of business transaction don.

3. From statement of income.

- income considered separately – 4,33,99,699/- what is the nature of income?

4. Form 3CD:

- 34 a.2. Payment to contractors - 1,24,63,661 (> 10 lakhs.). Name, PAN, address, amount, nature of work completed.
- 34.a.3. Fee for technical service – 1,15.96,560 (> 10 lakhs.). Name, PAN, address, amount, nature of Service rendered.

5. Details of exempt income & reasons as to why 14A disallowance should not be made.

6. Provide fixed asset schedule for A.Y. 2016-17 & ?
.?.2017-18 & reasons for difference in closing FDV of A.Y 2016-
17 opening WDV of A.Y.2017- 18.

The above details may be filed on or before 03.12.2019.

17. These informations were furnished by the petitioner by a detailed note on 09.12.2019. Therefore, it is clear that the reasons given for reopening the assessment is inspired from change of opinion by the Assessing Officer.

18. Therefore, there is no merits in the Impugned Notice dated 29.03.2021 and the Impugned Order dated 22.02.2022 for the Assessment Year 2017-2018. These writ petitions deserve to be allowed and are therefore accordingly allowed. No costs. Connected Writ Miscellaneous Petitions are closed.

19.09.2024

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

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To

1.The Additional/Joint/Deputy/Assistant Commissioner
of Income Tax/Income Tax Officer,
National Faceless Assessment Centre,
Delhi.

2.The Deputy Commissioner of Income Tax,
Corporate Circle – 1(1),
R.No.611, Wanaparthy Block,
No.121, M.G.Road,
Nungambakkam, Chennai – 600 034.

C.SARAVANAN, J.

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