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W.P.No.12159 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2024

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THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

Writ Petition No.12159 of 2023 and
W.M.P.No.11989 of 2023

M/s.Taeyang Metal India Private Limited,
Represented by its Managing Director,
Mr.Jung Younwook:64 years,
No.131, S.P.Koil main road,
Vadakkupattu Village,
Sriperumpudur, Kancheepuram-603 204.

... Petitioner

-VS-

1.The Deputy Commissioner of Income-Tax,
Corp Circle 3(1) Chennai,
Room No.411, Fourth Floor,
Chennai, Wanaparthi Block,
No.121, Mahatma Gandhi Road,
Nungambakkam, Chennai-600 034.

2.The Income-Tax Officer,
Income Tax Department,
National Faceless Assessment Centre,
Income Tax Department,
Ministry of Finance,
Room No.401, 2nd Floor, E-Ramp,
Jawaharlal Nehru Stadium,
Delhi-110 003.



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3. Dispute Resolution Panel-2,
'A' Wing, 4th floor,
Kendriya Sadan,
Koramangala, Bengaluru-560 034.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records in DIN No.ITBA/AST/S/143(3)/2022-2023/1051315997(1) dated 25.03.2023 for the Assessment Year 2018-2019 on the file of the 1st respondent and quash the same.

For Petitioner : Mr.R.Sandeep Bagmar

For Respondents : Mr.R.S.Balaji, Senior Standing Counsel (IT)
Ms.S.Premalatha, Junior Standing Counsel (IT)

ORDER

An assessment order dated 25.03.2023 is challenged by the petitioner. The petitioner filed his return of income under Section 139(1) of the Income Tax Act, 1961 (the Income Tax Act) for assessment year 2018-2019 on 24.11.2018. Upon the petitioner's case being selected for scrutiny, a notice under Section 143(2) was issued to the petitioner and the assessment was transferred to the Transfer Pricing Officer (TPO) under Section 92CA of the Income Tax Act for determination of the arm's length price (ALP) with



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respect to all international transactions reported by the assessee. The TPO issued the transfer pricing order on 28.07.2021 and proposed a downward adjustment of Rs.2,76,07,981/- with regard to ALP of international transactions. Thereafter, the second respondent, who is the National Faceless Assessment Centre, issued a draft assessment order dated 21.09.2021 in conformity with the adjustment proposed by the TPO. The petitioner filed objections thereto before the Dispute Resolution Panel (the DRP) under Section 144C(2) of the Income Tax Act. The DRP confirmed the addition made in the draft assessment order and issued directions on 16.06.2022 under Section 144C(5) of the Income Tax Act. Such directions were received by the petitioner on 16.06.2022 by e-mail. The directions were also sent to the assessee, the assessment officer/2nd respondent and the TPO. According to the petitioner, the DRP's directions were uploaded on the ITBA portal on 17.06.2022 and also served on the TPO on 27.06.2022. Thereafter, the final assessment order was issued on 25.03.2023. The present writ petition was filed in these facts and circumstances.



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2. Learned counsel for the petitioner assailed the impugned order

largely on two grounds. The primary ground of challenge was on limitation.

By advertng to Section 144C(13) of the Income Tax Act, learned counsel submitted that the said provision sets out the period of limitation for passing an assessment order upon receipt of directions from the DRP. Since such directions were received by the 2nd respondent through the portal on 17.06.2022, learned counsel submits that time would run from the end of the relevant month, i.e. 30.06.2022. If so computed, learned counsel submits that the limitation period of one month expired on 31.07.2022. By also referring to sub-section (12) of Section 144C, learned counsel contended that the DRP is required to issue directions within nine months of the reference. By placing reliance on the judgment of the Division Bench of this Court in *The Commissioner of Income Tax and another v. Roca Bathroom Products Private Limited, W.A.No.1517 and 1519 of 2021, Judgment dated 09.06.2022 (Roca)*, he pointed out that the Division Bench of this Court held that irrespective of whether the DRP issues directions within nine months, the assessing officer should pass orders within one month in line with the scheme of the Income Tax Act.



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3. The second ground of challenge was that the jurisdictional assessing officer did not have the authority to issue the assessment order. In support of this contention, learned counsel referred to clause (xx) of sub-section (1) of Section 144B. He pointed out that the said clause provides that the assessment unit shall send the draft order prepared under sub-clause (a) of clause (xvi) or under clause (xix) to the National Faceless Assessment Centre. He also submitted, in this connection, that the transfer order is not available. By referring to the counter of the respondents, wherein it is stated that the jurisdictional assessing officer received the directions of the 3rd respondent on 17.03.2023, learned counsel submits that the counter does not even specify the mode of receipt. He further submits that all orders and directions are required to be communicated electronically as per the E-Assessment Scheme 2019. In this connection, he referred to and relied upon the judgment of the Division Bench of the Delhi High Court in *Louis Dreyfus Company India Private Limited v. Deputy Commissioner of Income Tax Circle 13(1), Delhi and others(Louis Dreyfus)*, W.P.(C)15381/2022, order dated 30.01.2024, particularly paragraphs 20 to 22, where the Delhi High Court recorded that, as per the provisions of the E-Assessment Scheme



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2019, all orders, notices and decisions have to be necessarily uploaded on the ITBA portal as part of the larger faceless assessment regime which now holds the field. He further pointed out that it was held in *Louis Dreyfus* that uploading on the ITBA portal constitutes valid and sufficient service and that limitation should be computed on that basis. Since the directions of the DRP were uploaded on the ITBA portal on 17.06.2022, as evinced by the e-mail dated 25.08.2022 at page no.134 of the typed set of papers, learned counsel submits that the period of limitation is required to be computed from the end of June 2022.

4. Mr.R.S.Balaji, learned senior standing counsel, made submissions in response and to the contrary. As regards the contention relating to limitation, he relied on the language of sub-section (13) of Section 144C to contend that the period of limitation would run from the date of receipt of directions by the jurisdictional assessing officer. By relying on the counter of Mr.S.R.Nedumaran, Deputy Commissioner of Income Tax, he submits that the jurisdictional assessing officer received the directions only on 17.03.2023. He further submits that there was no communication by post or



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through the ITBA portal to the jurisdictional assessing officer until 17.03.2023. In support of this contention, he referred to and relied upon the order sheet pertaining to the assessment proceedings. He pointed out that the said order sheet records that “Response on draft order submitted” on 17.03.2023. Since the directions were received only on 17.03.2023, learned counsel submits that the assessment order was issued within time on 25.03.2023.

5. As regards the second contention relating to jurisdiction, learned senior standing counsel placed on record additional documents. He pointed out that a decision was taken to seek approval for transfer of cases from the National Faceless Assessment Centre to the jurisdictional assessing officer so as to enable assessment proceedings to be completed within the period of limitation with regard to cases where such period ends between 01.04.2022 and 30.06.2022. Pursuant to a request in this connection from the Principal Chief Commissioner of Income Tax (PCCIT) of the National Faceless Assessment Centre, it is stated that approval was granted through Whatsapp by the Chairman of the Central Board of Direct Taxes (CBDT) on



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13.04.2022 and that the relevant file was signed by Chairman CBDT on 21.04.2022. Hence, he submits that the jurisdictional assessing officer was fully authorised to issue the assessment order on 25.03.2023 when such order was issued.

6. The interpretation of sub-section 13 of Section 144C takes centre stage in the adjudication of this dispute. The said sub-section is set out below:

“(13) Upon receipt of the directions issued under sub-section (5), the Assessing Officer shall, in conformity with the directions, complete, notwithstanding anything to the contrary contained in section 153 [or section 153B], the assessment without providing any further opportunity of being heard to the assessee, within one month from the end of the month in which such direction is received. ”

From the above provision, it is evident that the specified time limit is one month from the end of the month in which directions are received. It is also clear that the time limit should be computed from the date of receipt of directions issued under sub-section(5) thereof. Sub-section (5) of Section



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144C deals with the issuance of directions by the DRP. The admitted position is that the DRP issued directions on 16.06.2022 and this fact is borne out by examining the proceedings of the DRP, which is contained at page Nos.122 to 130 of the typed set of papers. The said proceedings also record that the copy of the directions of the DRP is being forwarded to the assessee, the assessing officer and the TPO. The assessing officer referred to therein is the National Faceless Assessment Centre, Delhi. The petitioner has placed on record a communication from the Secretary and ACIT to the DRP. The said communication states that the assessing officer in the captioned case is the National Faceless Assessment Centre, Delhi and that a scanned copy of the proceedings was uploaded to the National Faceless Assessment Centre on 17.06.2022.

7. From the above discussion, the conclusion that emerges is that the directions of the DRP were forwarded to the assessing officer, i.e. National Faceless Assessment Centre, Delhi by uploading the same on 17.06.2022. Although learned senior standing counsel contends that the jurisdictional assessing officer received the directions only on 17.03.2023, for purposes of



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sub-section (13) of Section 144C, the date of receipt should be reckoned as the date of receipt by the National Faceless Assessment Centre on 17.06.2022. The internal arrangement by which the assessment proceedings relating to the petitioner were purportedly transferred so as to ensure that the proceedings are not barred by limitation is not material for this purpose. Indeed, as contended by learned counsel for the petitioner, the communication dated 12.04.2022 from the PCCIT of the National Faceless Assessment Centre seeking approval for transfer so as to complete assessment within the period of limitation underscores the fact that the income tax authorities were mindful of the fact that assessment would be barred by limitation unless such assessment is proceeded with and completed expeditiously.

8. All that remains is to examine whether the assessment proceedings would be barred by limitation if computed from the end of June 2022. If so computed, the period of one month expired on 31.07.2022, whereas the assessment order came to be issued on 25.03.2023. Hence, the assessment order was issued beyond the time limit specified in sub-section (13) of



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Section 144C. By taking into account not only statutory prescription but also the interpretation thereof by the Division Bench of this Court in *Roca* and that of the Division Bench of the Delhi High Court in *Louis Dreyfus*, I conclude that the assessment order cannot be sustained.

9. In view of the conclusion that the assessment proceedings are barred by limitation, it is unnecessary to examine as to whether the assessing officer was duly authorised to exercise jurisdiction either under the Whatsapp message issued on 13.04.2022 or upon the physical file being signed on 21.04.2022.

10. For reasons set out above, W.P.No.12159 of 2023 is allowed by quashing the impugned assessment order dated 25.03.2023. There will be no order as to costs. Consequently, connected miscellaneous petition is closed.

23.02.2024

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

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SENTHILKUMAR RAMAMOORTHY,J.

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