IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.09.2024

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.26764 of 2021
and
W.M.P.No.13575 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

Vs.

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

Prayer: 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/148/2020-21/1031552227(1) dated 17.03.2021 issued under Section 148 of the Income Tax Act, 1961 and the consequential proceedings in ITBA/AST/F/17-2021-22/1036807917(1) dated 10.11.2021.

For Petitioner : Mr.R.Sivaraman

For Respondent : Mr.B.Ramanakumar
Senior Standing Counsel

ORDER

In this writ petition, the petitioner has challenged the impugned notice issued under Section 148 of the Income Tax Act, 1961 on 17.03.2021 and the consequential speaking order dated 10.11.2021 overruling the objections of the petitioner against re-opening of the assessment that was completed earlier on 17.11.2015.

2. The writ petition is inspired primarily from the rulings of the Hon'ble Supreme Court in the case of ***CIT Vs. M/s.Kelvinator India Ltd***

reported in *(2010) 320 ITR 561* and followed the rulings in the above case.

3. It is submitted that after the returns were filed by the petitioner on 21.11.2015, the petitioner was also called upon to Show Cause as to why the technical knowledge, experience, skill, know-how etc,, amounting to Rs.3,66,71,731/- should not be brought to tax. It is further submitted that the petitioner had also filed a detailed reply to the same on 28.09.2015, which ultimately culminated in an Assessment Order under Section 143(3) of the Income Tax Act, 1961 on 17.11.2015. It is therefore submitted that the impugned notice dated 17.11.2021 is beyond the normal period of limitation of four years. There are no jurisdictional facts that are available for issuing the notice. It is further submitted that the respondent has also not considered the reply of the petitioner in response to the notice issued under Section 148 of the Income Tax Act, 1961.

4. The learned Senior Standing Counsel for the respondent would submit that the petitioner and its subsidiary in India have resorted to a

window dressing to transfer amounts to the petitioner. It is submitted that there can be no basis on which the amount towards the marketing and financial controls that could be advised by the petitioner sitting in America as the other contract in India itself as a team of officer. He further submit that after explanation 1 of Section 147 of the Income Tax Act, 1961, it is clear that mere submission of information is not a sufficient disclosure.

5. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Junior Standing Counsel for the respondent.

6. The impugned order disposing of the objections of the petitioner against reopening of the completed assessment on 17.11.2015 is not only non speaking but also ignores the documents that were exchanged between the petitioner and the respondent, which culminated in the Assessment order dated 17.11.2015 for the relevant Assessment Year namely 2013-2014 under Section 143(3) of the Income Tax Act, 1961.

7. In view of the above, the impugned order is liable to be quashed. Consequently, the impugned notice is also liable to be quashed.

8. Accordingly, this Writ Petition stands allowed. No costs. Consequently, connected writ miscellaneous petition is closed.

24.09.2024

Index : Yes/No
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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