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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 1417/2019

M/S. INFONOX SOFTWARE PRIVATE LIMITED ..... Petitioner

Through: Mr. Deepak Chopra, Adv.

versus

DEPUTY COMMISSIONER OF INCOME TAX & ORS. ..... Respondents

Through: Mr. Vipul Agrawal, SSC with Mr. Gibran Naushad, JSC and Ms. Sakashi Shairwal, JSC.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE AMIT BANSAL

O R D E R

% **22.05.2024**

1. This writ petition has been preferred seeking the following reliefs:

> "(a). Issue a writ of mandamus or any other appropriate writ quashing the reference made by the First Respondent under section 92CA(l) of the Act and quash the order dated 8.12.2018 passed by the First Respondent disposing off the objections raised by the Petitioner against reference to Third Respondent.
> (b). Pass such other orders which this Hon'ble Court may deem fit and proper on the facts and in the circumstances of the case."

2. The principal ground on which the reference under Section 92CA of the Income Tax Act, 1961 ["**Act**"] is challenged is that the Assessing Officer ["**AO**"] has failed to bear in consideration Instruction No. 03/2016 of the Central Board of Direct Taxes ["**Board**"] dated 10 March 2016, and more particularly Para 4.1 thereof, which reads as follows:

> "**4.1** <u>The role of the TPO begins after a reference is received from the AO. In terms of Section 92CA, this role is limited to the</u>

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determination of the ALP in relation to international transactions or specified domestic transactions referred to him by the AO. However, if any other international transaction comes to the notice of the TPO during the course of the proceedings before him, then he is empowered to determine the ALP of such other international transactions also by virtue of Section 92CA (2A) and (2B). The transfer price has to be determined by the TPO in terms of Section 92C. The price has to be determined by using anyone of the methods stipulated in sub-section (1) of Section 92C and by applying the most appropriate method referred to in Sub-section (2) thereof. There may be occasions where application of the most appropriate method provides results which are different but equally reliable. In all such cases, further scrutiny may be necessary to evaluate the appropriateness of the method, the correctness of the data, weight given to various factors and so on. The selection of the most appropriate method will depend upon the facts of the case and the factors mentioned in Rule 10C. The TPO, after taking into account all relevant facts and data available to him, shall determine the ALP and pass a speaking order."

3. According to Mr. Chopra, learned counsel appearing in support of the writ petition, a bare perusal of the reference as made would indicate that the AO has failed to bear in mind the Risk Parameters as framed.

4. We find ourselves unable to sustain the challenge which stands raised bearing in mind the undisputed fact that Section 92CA of the Act confers a statutory power on the AO to make a reference to the Transfer Pricing Officer ["**TPO**"]. An Instruction of the Board and the Risk Parameters, which may have been framed, are merely to act as guides for the purposes of exercise of that power.

5. We fundamentally bear in mind the fact that the petitioner seeks to invoke our extraordinary jurisdiction under Article 226 of the Constitution, and that too at the stage of a mere reference to the TPO. We consequently find no justification for continuing the writ petition on our board. This, since all contentions of the petitioner-assessee including the fact that any order that the TPO may pass with respect to

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Arm's Length Price ["**ALP**"], or a Draft Assessment Order which may be framed, or even for that matter a direction by the Dispute Resolution Panel ["**DRP**"], and ultimately by the Income Tax Appellate Tribunal would themselves be in accordance with the scheme of Section 144C of the Act, and in respect of which the petitioner has adequate and efficacious remedies under the Act.

6. We are thus of the opinion that the reference in itself shall cause no prejudice warranting invocation of Article 226 of the Constitution.

7. The writ petition fails and shall stand dismissed.

YASHWANT VARMA, J

AMIT BANSAL, J

MAY 22, 2024/kk

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