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

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Date of Decision : 28.10.2024

+ ITA 414/2024 CM APPL. 44097/2024
+ ITA 416/2024 CM APPL. 44120/2024
+ ITA 418/2024 CM APPL. 44227/2024
+ ITA 424/2024 CM APPL. 45107/2024

**COMMISSIONER OF INCOME TAX INTERNATIONAL
TAXATION-1, NEW DELHI**

.....Appellant

Through: Mr. Sunil Agarwal, SSC, Mr.
Shivansh B. Pandya, JSC, Mr. Viplav
Acharya, JSC and Mr. Utkarsh
Tiwari, Adv.

versus

ORACLE SYSTEMS CORPORATION

.....Respondent

Through: Mr. G.C. Srivastava and Mr. K.
Mehrotra, Advs.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

VIBHU BAKHRU, J. (ORAL)

CM APPL. 44097/2024 in ITA 414/2024

CM APPL. 44120/2024 in ITA 416/2024

CM APPL. 44227/2024 in ITA 418/2024

CM APPL. 45107/2024 in ITA 424/2024

1. For the reasons stated in these applications, the delay in filing the present appeals is condoned.



2. The applications are, accordingly, allowed and are disposed of.

ITA 414/2024, ITA 416/2024, ITA 418/2024 & ITA 424/2024

3. The Revenue has filed the present appeals impugning a common order dated 26.09.2022 passed by the learned Income Tax Appellate Tribunal (hereafter *the Tribunal*) in ITA. No. 1829/Del/2009 in respect of the assessment year (AY) 1997-98; ITA No. 1830/Del/2009 in respect of the AY 1998-99; ITA No. 1831/Del/2009 in respect of the AY 1999-2000; and ITA No. 1832/Del/2009 in respect of the AY 2000-01.

4. The Revenue has projected a common set of questions in appeals relating to the first three assessment years – AY1997-98, AY1998-99 and AY1999-2000. The same are set out below:

“3.1. Whether on the facts and circumstances of the case and in law, the ITAT erred in not considering the fact that one of the reasons for reopening of assessment was that the royalty income on global deals was not offered to tax even though the same is taxable U/s 9(l)(vii) of Income Tax Act, 1961 in view of the fact that such software was utilized in India.

3.2. Whether on the facts and circumstances of the case and in law, the ITAT erred in declaring the notice issued U/s 148 of the Act null and void without appreciating the fact that the escapement of income in respect of royalty income on global deals was sufficient enough to uphold the legal validity of reopening of assessment.

3.3. Whether on the facts and circumstances of the case and in law, the ITAT erred in not appreciating the fact that OSIL's Bangalore facility had already created a PE for the Assessee and therefore it was unwarranted to establish that Hyderabad facility of OSIL also creates PE for the Assessee and accordingly the existence of Hyderabad facility in the concurred year is irrelevant as long as Assessee's taxable presence assign a PE in the form of OSIL's Bangalore Facility had been established already.”



5. In addition to the above, in ITA No. 418/2024, which concerns the AY 2000-01, the Revenue has projected the following question:

“Whether on the facts and circumstances of the case and in law, the ITAT erred quashing the assessment proceedings, without appreciating the fact that the assessee fully cooperated throughout the assessment proceedings and in simply stating that there is no valid issuance and service of notice U/s 143(2) of the Act, which is in grave contradiction to Section 292BB of the Income Tax Act, 1961.”

6. Mr. Aggarwal, the learned counsel appearing for the Revenue had also assailed the findings of the learned Tribunal, setting aside the reopening of the assessment proceedings under Section 147 of the Income Tax Act, 1961 (hereafter *the Act*). The said issue was considered by this Court in the order dated 12.08.2024 and this Court had expressed its view that there were no reasons to interfere with the views expressed by the learned Tribunal, insofar this question is concerned.

7. Mr. Aggarwal fairly states that in view of the decision rendered by this Court on 12.08.2024, the other questions of law as framed, would not survive. He, however, points out that the question of law involved in ITA No. 418/2024 is different.

8. It is the Revenue’s contention that since the assessee had participated in the proceedings, the failure to issue any notice under Section 143(2) of the Act would not be fatal to the findings. The learned Tribunal had considered the said question and had observed as under:-

“24. We have considered rival submissions and perused the materials on record. It is the specific contention of the assessee before us that the Assessing Officer had failed to issue any notice under section 143(2) of the Act in course of the assessment proceeding. Though, in the body of the assessment order the Assessing Officer has mentioned that notice under section 143(2) of the Act was issued



to the assessee, however, in response to query raised by us, learned Departmental Representative was unable to controvert assessee's allegation that no notice under section 143(2) of the Act was ever issued to the assessee. No contrary evidence was placed before us by the department to establish valid issuance and service of notice under section 143(2) of the Act on the assessee. While dealing with an identical issue in assessee's own case, the Hon'ble Jurisdictional High Court has observed as under:

".....Additionally, it is contended that pursuant to the re-assessment notice the AO did not issue any further notice as called for by law under Section 143(2) of the Act, within the time prescribed, proposing to take further proceedings in the re-assessment. This aspect too is undisputed. The notice under Section 143(2) of the Act ought to have been issued within six months prescribed period (which in this case ended on 30.09.2013), however, that notice was issued on 09.01.2014. This aspect was highlighted not in the petition but in the course of the proceedings in the rejoinder filed by the assessee sometime in July, 2016. It sought to follow this up through an amendment application (CM No.27598/2018). In the light of these events, which are both subsequent to the initiation of the reassessment proceedings, the entire purpose for re-assessment, assuming that there was any, can no longer be achieved. The judgment of this Court in Pr, Commissioner of Income Tax vs, Silver Line (2016) 383 ITR 455 and the other subsequent decisions have ruled that omission to issue notice under Section 143(2) of the Act within the time stipulated in respect of any assessment is fatal.

As a result of the above discussion, the reassessment notice dated 15.02.2013 and all consequent proceedings emanating from it are hereby quashed.....".

25. The other decisions cited by learned counsel for the assessee also express similar view. Thus, respectfully following the ratio laid down by Hon'ble High Court in assessee's own case, as discussed above, we hold that in absence of a valid issuance and service of notice under section 143(2) of the Act on assessee, the present proceeding has become invalid. Accordingly, we quash the impugned assessment order. Consequently, the order passed by learned Commissioner (Appeals) is hereby set aside. In view of our decisions



hereinabove, grounds raised on merits are not required for adjudication.”

9. Mr. Aggarwal, does not counter that the issue sought to be raised is covered by the earlier decision of this Court, as noted by the learned Tribunal.

10. It is also material to note that in the present case, no notice under Section 143(2) of the Act had been issued and, therefore, the question of notice being deemed to be considered as a valid notice under Section 292BB of the Act does not arise.

11. Clearly, no substantial question of law arises in ITA No. 418/2024 as well.

12. In view of the above, the present appeals are dismissed.

VIBHU BAKHRU, J

SWARANA KANTA SHARMA, J

OCTOBER 28, 2024/A

[Click here to check corrigendum, if any](#)