IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SATHISH NINAN

&

THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN

THURSDAY, THE 10TH DAY OF APRIL 2025 / 20TH CHAITHRA, 1947

WP(C) NO. 23128 OF 2016

PETITIONER:

**SUNTEC BUSINESS SOLUTIONS PVT. LTD
321, NILA, TECHNOPARK CAMPUS,
THIRUVANANTHAPURAM-695581, REPRESENTED BY ITS CHIEF FINANCE OFFICER, MR. SURESH RAO VR**

**BY ADVS.
SRI.M.GOPIKRISHNAN NAMBIAR
SRI.P.BENNY THOMAS
SRI.K.JOHN MATHAI
SRI.JOSON MANAVALAN
SRI.KURYAN THOMAS
SRI.RAJA KANNAN**

RESPONDENTS:

1 **THE UNION OF INDIA,
REPRESENTED BY THE SECRETARY, MINISTRY OF FINANCE (DEPARTMENT OF REVENUE), NORTH BLOCK, NEW DELHI 110001.**

2 **THE AUTHORITY FOR ADVANCE RULINGS,
(INCOME TAX), 5TH FLOOR, NDMC BUILDING, SATYA MARG, CHANAKYAPURI, NEW DELHI 1100021, REPRESENTED BY ITS SECRETARY**

3 **THE ASSISTANT COMMISSIONER OF INCOME TAX
CIRCLE I, AAYAKAR BHAVAN, KOWDIAR, TRIVANDRUM-695003.**

4 JOINT COMMISSIONER OF INCOME TAX,
SPECIAL RANGE, AAYAKAR BHAVAN, KOWDIAR,
TRIVANDRUM-695003.

BY ADVS.
CHRISTOPHER ABRAHAM
P.R.AJITH KUMAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 10.04.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SATHISH NINAN &
SHOBA ANNAMMA EAPEN, JJ.
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W.P.(C) No.23128 of 2016
= = = = = = = = = = = = = = = = = = =
Dated this the 10th day of April, 2025

J U D G M E N T

Sathish Ninan, J.

The challenge in the writ petition, as amended, is against the order of the Income Tax Appellate Tribunal in so far as it refused to consider the claim of the petitioner on the applicability of Section 40(a)(i) of the Income Tax Act(herein after referred to as "the Act").

2. The petitioner is an Indian Company. It had business transactions with M/s Nuwaza Software JT, Dubai, a non-resident company. The petitioner approached the Authority for Advance Rulings for ruling on the taxability. In the meanwhile, since the assessment proceedings had commenced, the Authority for Advance Rulings rejected the application.

3. Challenging the order of rejection by the Authority for Advance Rulings, the petitioner approached this Court in this writ petition. This Court permitted the assessment proceedings to go on, but provisionally.

4. The assessing authority rejected the claim of the petitioner.

5. Challenging the order of rejection by the assessing authority, the petitioner filed appeal before the Dispute Resolution Panel. The said authority, as per Ext.P6 order, concurred with the assessing authority.

6. The order of the Dispute Resolution Panel was challenged before the Income Tax Appellate Tribunal. The Tribunal having due consideration of the pendency of this writ petition did not enter any finding on the merits of the claim, and the appeal is disposed of as per order dated 15.11.2018. Thereafter, the petitioner proceeded to have the writ petition amended challenging

the order of the Tribunal also.

7. We have heard learned counsel on either side.

8. The Authority for Advance Ruling has since been abolished. The assessment proceedings were completed by the original authority. The first appeal was unsuccessful. Though appeal was preferred before the Tribunal, as was noticed supra, the Tribunal did not advert to the contention of the petitioner with regard to the applicability of Section 40(a)(i) of the Act solely for the reason of pendency of this writ petition.

9. We are of the opinion that it would be sufficient if the contention based on the applicability Section 40(a)(i) of the Act is considered by the Tribunal on its merits. This writ petition need not be kept pending any further.

Resultantly, the writ petition is allowed. The order of the Income Tax Appellate Tribunal (Ext.P8) in

so far as it relates to the applicability of Section 40(a)(i) of the Act, is set aside. The Tribunal shall consider the claim with regard to the applicability of the said provision, on its merits, after hearing both sides.

Sd/-
SATHISH NINAN
JUDGE

Sd/-
SHOBA ANNAMMA EAPEN
JUDGE

kns/-

//True Copy//

P.S. To Judge

APPENDIX OF WP(C) 23128/2016

PETITIONER EXHIBITS

EXHIBIT P1	**TRUE COPY OF THE APPLICATION DATED 04.12.2014 FILED BY THE PETITIONER UNDER SECTION 245 Q (1) OF THE ACT BEFORE THE 2ND RESPONDENT**
EXHIBIT P2	**TRUE COPY OF THE REPORT DATED 08.04.2016 SUBMITTED BY THE 4TH RESPONDENT TO AAR**
EXHIBIT P3	**TRUE COPY OF THE NOTICE DATED 10.09.2014 ISSUED BY THE 3RD RESPONDENT UNDER SECTION 143 (2) OF THE ACT, FOR AY 2013-14**
EXHIBIT P4	**THE TRUE COPY OF THE PROCEEDINGS DATED 11.04.2016 OF THE 2ND RESPONDENT IN AAR. NO. 1670/2015**
Exhibit P5	**TRUE COPY OF THE DRAFT ASSESSMENT ORDER DATED 23/11/2016 ISSUED BY THE DEPUTY COMMISSIONER OF INCOME TAX, CIRCLE-2 (1), THIRUVANANTHAPURAM, UNDER SECTIONS 143 (3), 92CA AND 144C OF THE ACT, FOR THEA.Y.2013-14.**
Exhibit P6	**TRUE COPY OF THE DIRECTIONS DATED 22/08/2017 ISSUED BY THE DISPUTE RESOLUTION PANEL-2, BANGALORE UNDER SECTION 144C(5) OF THE ACT.**
Exhibit P7	**TRUE COPY OF THE ORDER OF ASSESSMENT DATED 28/09/2017 ISSUED BY THE ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE-1(1), THIRUVANANTHAPURAM, UNDER SECTIONS 143(3), 92CA AND 144C OF THE ACT.**
Exhibit P8	**TRUE COPY OF THE ORDER DATED 15/11/2018 ISSUED BY THE INCOME TAX APPELLATE TRIBUNAL COCHIN BENCH, COCHIN, IN ITA NO.607/COCH/2017.**
Exhibit P9	**TRUE COPY OF THE RELEVANT EXTRACT OF THE FINANCE ACT, 2021, AS NOTIFIED BY THE MINISTRY OF LAW AND JUSTICE (LEGISLATIVE DEPARTMENT) IN THE GAZETTE OF INDIA, DATED 28/03/2021.**
Exhibit P10	**TRUE COPY OF THE NOTIFICATION DATED 01/09/2021 ISSUED BY THE MINISTRY OF FINANCE, DEPARTMENT OF REVENUE, CBDT.**
