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

\+ W.P.(C) 3876/2023

CONSULTING ENGINEERING SERVICES INDIA PVT. LTD. .....Petitioner

Through: Ms. Ananya Kapoor, Mr. Sumit Lalchandani & Mr. Utkarsh Kumar Gupta, Advs.

versus

ASSESSMENT UNIT, INCOME TAX DEPARTMENT,NATIONAL FACELESS ASSESSMENT CENTRE & ANR. .....Respondents

Through: Mr. Debesh Panda, SSC with Mr. Vikramaditya Singh, Ms. Yashika Gupta & Mr. Kanishk Aggarwal, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

ORDER

% **11.03.2025**

1. The instant writ petition has been preferred seeking quashing of the notices dated 06 March 2023 and 19 March 2023 as also for an appropriate declaration being rendered restraining the respondents from proceeding with the assessment pertaining to **Assessment Year**[1] 2010-11. The challenge, as voiced by Ms. Kapoor, learned counsel representing the writ petitioner, flows essentially on the basis of the provisions contained in Section 153(3) of the **Income Tax Act, 1961**[2].

2. For the purposes of the disposal of the writ petition, we take note of the following essential facts. For the year under consideration, the petitioner is stated to have filed its **Return of Income**[3] on 15

[1] AY
[2] Act
[3] Return

October 2010. The aforesaid Return and the issues emanating therefrom came to be referred to the **Transfer Pricing Officer**[4], who vide an order of 26 November 2013, determined the **Arm's Length Price**[5] with respect to international transactions. Basis the aforesaid determination by the TPO, the **Assessing Officer**[6] passed a draft assessment order on 28 February 2014. Aggrieved by the aforesaid and the adjustment of INR 45,54,546/-, which was proposed, the petitioner approached the **Dispute Resolution Panel**[7]. Although the DRP allowed partial relief to the writ petitioner, it confirmed the major adjustments and additions which had been proposed by the TPO.

3. It is this order which led to the institution of the appeal before the **Income Tax Appellate Tribunal**[8]. That appeal ultimately came to be allowed and disposed of on 21 October 2020 with the following operative directions:

> "18. When we examine assessment order passed by the AO, it is observed that the taxpayer has made extensive submissions before the AO which have not been examined by the AO to decide the issue in controversy. AO rather decided the issue by following its own order for AY 2009-10 confirmed by the ld. CIT (A) and thereby made this addition on account of undervalued the closing job in progress. When undisputedly AO without applying his mind qua the year under assessment has made the addition by following its own order for AY 2009-10, which is no more in existence as the issue in controversy has been remitted back to the AO for de novo assessment by the Tribunal, it would not be in the interest of justice to deprive the AO to examine the submissions now made by the ld. AR for the taxpayer because the facts in entirety are required to be examined by the AO first and thereafter by ld. CIT (A), if so requires. So, this issue is remitted back to the AO to decide afresh in the light of the submissions made and to be made by the

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[4] TPO
[5] ALP
[6] AO
[7] DRP
[8] Tribunal

taxpayer, if any, by providing an opportunity of being heard. Ground No.3 of taxpayer's appeal is allowed for statistical purposes.

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22. Keeping in view the undisputed fact that while deciding this issue also, the AO has not applied his mind by examining the extensive submissions made by the taxpayer rather proceeded to make this addition by bluntly following its own order passed in AY 2009-10 and confirmed by the ld. CIT (A) in taxpayer's own case, which is no more in existence having been set aside by the Tribunal vide order (supra) for de novo assessment, it would not be in the interest of justice to consider the arguments addressed by the taxpayer before the Tribunal as the same are required to be examined first by the AO by examining the facts of the case at hand in entirety, otherwise it will cause prejudice to the Revenue who has merely decided this issue by following its own order for AY 2009-10 which is no more in existence. So, this issue is also remitted back to the AO to decide afresh after providing an opportunity of being heard to the taxpayer.

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24. Ld. AR for the taxpayer challenging the impugned disallowance contended inter alia that AO has failed to appreciate the fact that only amount of Rs.6,00,000/- was paid to CES Technologies Pvt. Ltd. and remaining amount of Rs.50,891/- was paid to other persons who are not related to the taxpayer; that the taxpayer has obtained a project of "Soil Health Card" from Anand Agriculture University, Government of Gujarat in FY 2004-05 and the estimated fee for the said project was Rs.4,06,63,469/-; that out of the business expediency, the taxpayer has sub-contracted the said work to CES Technologies Pvt. Ltd. for a fee of Rs.3,04,97,602/- being 75% of the total project amount as per letter dated May 1, 2007; that the payment made by the taxpayer to CES Technologies Pvt. Ltd. is not excessive as the said contract fee is less than the main contract; and that in AY 2009-10, AO has already considered the total sub-contracted value for computing the losses out of the said project and it would lead to double taxation. We are of the considered view that when sub-contracted value for computing the losses out of the said project (Soil Health Card) has already been considered in AY 2009-10, the disallowance of aforesaid payment to CES Technologies Pvt. Ltd. would amount to double taxation. AO is directed to verify these facts and delete the addition accordingly. Ground No.5 is determined in favour of the taxpayer.

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27. We are of the considered view that ld. DRP has reached the conclusion by deleting the disallowance made by the AO being the expenses pertaining to numerous projects i.e. pre-2003 and post-2003 after calling remand report from the AO. Ld. DR for the Revenue has failed to point out any infirmity and irregularity in the aforesaid findings. So, we find no perversity or illegality in the deletion of disallowance made by the ld. DRP, hence ground no.1 of Revenue's appeal is determined against the Revenue.

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29. When in Annexure to Tax Audit Report Item No.17D(1) it has been intimated that amount of Rs.8,462/- is debited to P&L account being expenditure incurred at club entrance fee and subscription, causal observation made by the AO that same are not wholly and exclusively spent for business purpose, is not sustainable. So, keeping in view the meager amount and the fact that the same has been incurred as entrance fee and subscription for club has been rightly deleted by the ld. DRP. So, ground no.2 of Revenue's appeal is determined against the Revenue.

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35. Furthermore, we are of the considered view that when ld. DRP has enhanced addition on account of delayed payment on receivable without giving any notice to the taxpayer for said enhancement, the addition in question is not sustainable being hit by rule of natural justice. So, it would be in the interest of justice to remit the case back to ld. DRP to decide afresh in the light of what has been discussed hereinbefore, after providing an opportunity of being heard to the taxpayer. Needless to say that ld. DRP is also directed to take into account the rule of consistency as the LIBOR of the taxpayer has been accepted for charging interest on delayed receipts of receivables in the subsequent years. So, transfer pricing issue is decided in favour of the taxpayer for statistical purposes."

4. As is manifest from the above, the matter was ultimately remitted by the Tribunal for the consideration of the AO on the issue of addition on account of short valuation of closing jobs in progress as well as losses allegedly incurred on jobs commenced prior to 01 April 2003 and thereafter as well as the disallowance under Section 40A(2)(b) of the Act.

5. It is the case of the writ petitioner that despite the order of remit

as framed on 21 October 2020, the respondents have failed to frame an order of assessment till date. The questions which stand posited would thus have to be answered bearing in mind the provisions comprised in Section 153(3) of the Act and which reads as follows:

> "Time limit for completion of assessment, reassessment and recomputation.
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> 153. (1) No order of assessment shall be made under section 143 or section 144 at any time after the expiry of twenty-one months from the end of the assessment year in which the income was first assessable:
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> **Provided** that in respect of an order of assessment relating to the assessment year commencing on the 1st day of April, 2018, the provisions of this sub-section shall have effect, as if for the words "twenty-one months", the words "eighteen months" had been substituted:
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> **Provided further** that in respect of an order of assessment relating to the assessment year commencing on the—
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> > (i) 1st day of April, 2019, the provisions of this sub-section shall have effect, as if for the words "twenty-one months", the words "twelve months" had been substituted;
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> > (ii) 1st day of April, 2020, the provisions of this sub-section shall have effect, as if for the words "twenty-one months", the words "eighteen months" had been substituted:
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> **Provided also** that in respect of an order of assessment relating to the assessment year commencing on or after the 1st day of April, 2021, the provisions of this sub-section shall have effect, as if for the words "twenty-one months", the words "nine months" had been substituted.
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> (1A) Notwithstanding anything contained in sub-section (1), where a return under sub-section (8A) of section 139 is furnished, an order of assessment under section 143 or section 144 may be made at any time before the expiry of nine months from the end of the financial year in which such return was furnished.
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> (2) No order of assessment, reassessment or recomputation shall be made under section 147 after the expiry of nine months from the end of the financial year in which the notice under section 148 was served:

Provided that where the notice under section 148 is served on or after the 1st day of April, 2019, the provisions of this sub-section shall have effect, as if for the words "nine months", the words "twelve months" had been substituted.

(3) Notwithstanding anything contained in sub-sections (1) and (2), an order of fresh assessment or fresh order under section 92CA, as the case may be, in pursuance of an order under section 254 or section 263 or section 264, setting aside or cancelling an assessment, or an order under section 92CA, as the case may be], may be made at any time before the expiry of nine months from the end of the financial year in which the order under section 254 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner or, as the case may be, the order under section 263 or section 264 is passed by the Principal Commissioner or Commissioner:

Provided that where the order under section 254 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner or, as the case may be, the order under section 263 or section 264 is passed by the Principal Commissioner or Commissioner on or after the 1st day of April, 2019, the provisions of this sub-section shall have effect, as if for the words "nine months", the words "twelve months" had been substituted.

(4) Notwithstanding anything contained in sub-sections (1), (2) and (3), where a reference under sub-section (1) of section 92CA is made during the course of the proceeding for the assessment or reassessment, the period available for completion of assessment or reassessment, as the case may be, under the said sub-sections (1), (2) and (3) shall be extended by twelve months.

(5) Where effect to an order under section 250 or section 254 or section 260 or section 262 or section 263 or section 264 is to be given by the Assessing Officer or the Transfer Pricing Officer, as the case may be, wholly or partly, otherwise than by making a fresh assessment or reassessment or fresh order under section 92CA, as the case may be, such effect shall be given within a period of three months from the end of the month in which order under section 250 or section 254 or section 260 or section 262 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be, the order under section 263 or section 264 is passed by the Principal Commissioner or Commissioner:

Provided that where it is not possible for the Assessing Officer or the Transfer Pricing Officer, as the case may be, to give effect to such order within the aforesaid period, for reasons beyond his control, the Principal Commissioner or Commissioner on receipt of such request in writing from the Assessing Officer or the Transfer Pricing Officer, as the case may be, if satisfied, may allow an additional period of six months to give effect to the order:

Provided further that where an order under section 250 or section 254 or section 260 or section 262 or section 263 or section 264 requires verification of any issue by way of submission of any document by the assessee or any other person or where an opportunity of being heard is to be provided to the assessee, the order giving effect to the said order under section 250 or section 254 or section 260 or section 262 or section 263 or section 264 shall be made within the time specified in sub-section (3).

(5A) Where the Transfer Pricing Officer gives effect to an order or direction under section 263 by an order under section 92CA and forwards such order to the Assessing Officer, the Assessing Officer shall proceed to modify the order of assessment or reassessment or recomputation, in conformity with such order of the Transfer Pricing Officer, within two months from the end of the month in which such order of the Transfer Pricing Officer is received by him.

(6) Nothing contained in sub-sections (1) and (2) shall apply to the following classes of assessments, reassessments and recomputation which may, subject to the provisions of sub-sections (3), (5) and (5A), be completed—

(i) where the assessment, reassessment or recomputation is made on the assessee or any person in consequence of or to give effect to any finding or direction contained in an order under section 250, section 254, section 260, section 262, section 263, or section 264 or in an order of any court in a proceeding otherwise than by way of appeal or reference under this Act, on or before the expiry of twelve months from the end of the month in which such order is received or passed by the Principal Commissioner or Commissioner, as the case may be; or

(ii) where, in the case of a firm, an assessment is made on a partner of the firm in consequence of an assessment made on the firm under section 147, on or before the expiry of twelve months from the end of the month in which the assessment order in the case of the firm is passed.

(7) Where effect to any order, finding or direction referred to in sub-section (5) or sub-section (6) is to be given by the Assessing Officer, within the time specified in the said sub-sections, and such

order has been received or passed, as the case may be, by the income-tax authority specified therein before the 1st day of June, 2016, the Assessing Officer shall give effect to such order, finding or direction, or assess, reassess or recompute the income of the assessee, on or before the 31st day of March, 2017.

(8) Notwithstanding anything contained in the foregoing provisions of this section, sub-section (2) of section 153A or sub-section (1) of section 153B, the order of assessment or reassessment, relating to any assessment year, which stands revived under sub-section (2) of section 153A, shall be made within a period of one year from the end of the month of such revival or within the period specified in this section or sub-section (1) of section 153B, whichever is later.

(9) The provisions of this section as they stood immediately before the commencement of the Finance Act, 2016, shall apply to and in relation to any order of assessment, reassessment or recomputation made before the 1st day of June, 2016:

Provided that where a notice under sub-section (1) of section 142 or sub-section (2) of section 143 or section 148 has been issued prior to the 1st day of June, 2016 and the assessment or reassessment has not been completed by such date due to exclusion of time referred to in Explanation 1, such assessment or reassessment shall be completed in accordance with the provisions of this section as it stood immediately before its substitution by the Finance Act, 2016 (28 of 2016).

Explanation 1.— For the purposes of this section, in computing the period of limitation—

(i) the time taken in reopening the whole or any part of the proceeding or in giving an opportunity to the assessee to be re-heard under the proviso to section 129; or

(ii) the period during which the assessment proceeding is stayed by an order or injunction of any court; or

(iii) the period commencing from the date on which the Assessing Officer intimates the Central Government or the prescribed authority, the contravention of the provisions of clause (21) or clause (22B) or clause (23A) or clause (23B) 17[, under clause (i) of the first proviso] to sub-section (3) of section 143 and ending with the date on which the copy of the order withdrawing the approval or rescinding the notification, as the case may be, under those clauses is received by the Assessing Officer; or

(iv) the period commencing from the date on which the Assessing Officer directs the assessee to get his accounts audited under sub-section (2A) of section 142 and—

(a) ending with the last date on which the assessee is required to furnish a report of such audit under that sub-section; or

(b) where such direction is challenged before a court, ending with the date on which the order setting aside such direction is received by the Principal Commissioner or Commissioner; or

(v) the period commencing from the date on which the Assessing Officer makes a reference to the Valuation Officer under sub-section (1) of section 142A and ending with the date on which the report of the Valuation Officer is received by the Assessing Officer; or

(vi) the period (not exceeding sixty days) commencing from the date on which the Assessing Officer received the declaration under sub-section (1) of section 158A and ending with the date on which the order under sub-section (3) of that section is made by him; or

(vii) in a case where an application made before the Income-tax Settlement Commission is rejected by it or is not allowed to be proceeded with by it, the period commencing from the date on which an application is made before the Settlement Commission under section 245C and ending with the date on which the order under sub-section (1) of section 245D is received by the Principal Commissioner or Commissioner under sub-section (2) of that section; or

(viii) the period commencing from the date on which an application is made before the Authority for Advance Rulings or before the Board for Advance Rulings under sub-section (1) of section 245Q and ending with the date on which the order rejecting the application is received by the Principal Commissioner or Commissioner under sub-section (3) of section 245R; or

(ix) the period commencing from the date on which an application is made before the Authority for Advance Rulings 18[or before the Board for Advance Rulings] under sub-section (1) of section 245Q and ending with the date on which the advance ruling pronounced by it is received by the Principal Commissioner or Commissioner under sub-section (7) of section 245R; or

(x) the period commencing from the date on which a reference or first of the references for exchange of information is made by an authority competent under an agreement referred to in section 90 or section 90A and ending with the date on which the information requested is last received by the Principal Commissioner or Commissioner or a period of one year, whichever is less; or

(xi) the period commencing from the date on which a reference for declaration of an arrangement to be an impermissible avoidance arrangement is received by the Principal Commissioner or Commissioner under sub-section (1) of section 144BA and ending on the date on which a direction under sub-section (3) or sub-section (6) or an order under sub-section (5) of the said section is received by the 19[Assessing Officer; or

(xii) the period (not exceeding one hundred and eighty days) commencing from the date on which a search is initiated under section 132 or a requisition is made under section 132A and ending on the date on which the books of account or other documents, or any money, bullion, jewellery or other valuable article or thing seized under section 132 or requisitioned under section 132A, as the case may be, are handed over to the Assessing Officer having jurisdiction over the assessee,—

(a) in whose case such search is initiated under section 132 or such requisition is made under section 132A; or

(b) to whom any money, bullion, jewellery or other valuable article or thing seized or requisitioned belongs to; or

(c) to whom any books of account or documents seized or requisitioned pertains or pertain to, or any information contained therein, relates to; or

(xiii) the period commencing from the date on which the Assessing Officer makes a reference to the Principal Commissioner or Commissioner under the second proviso to sub-section (3) of section 143 and ending with the date on which the copy of the order under clause (ii) or clause (iii) of the fifteenth proviso to clause (23C) of section 10 or clause (ii) or clause (iii) of sub-section (4) of section 12AB, as the case may be, is received by the Assessing

Officer, shall be excluded:

Provided that where immediately after the exclusion of the aforesaid period, the period of limitation referred to in sub-sections (1), (2), (3) and sub-section (8) available to the Assessing Officer for making an order of assessment, reassessment or recomputation, as the case may be, is less than sixty days, such remaining period shall be extended to sixty days and the aforesaid period of limitation shall be deemed to be extended accordingly:

Provided further that where the period available to the Transfer Pricing Officer is extended to sixty days in accordance with the proviso to sub-section (3A) of section 92CA and the period of limitation available to the Assessing Officer for making an order of assessment, reassessment or recomputation, as the case may be, is less than sixty days, such remaining period shall be extended to sixty days and the aforesaid period of limitation shall be deemed to be extended accordingly:

Provided also that where a proceeding before the Settlement Commission abates under section 245HA, the period of limitation available under this section to the Assessing Officer for making an order of assessment, reassessment or recomputation, as the case may be, shall, after the exclusion of the period under sub-section (4) of section 245HA, be not less than one year; and where such period of limitation is less than one year, it shall be deemed to have been extended to one year; and for the purposes of determining the period of limitation under sections 149, 154, 155 and 158BE and for the purposes of payment of interest under section 244A, this proviso shall also apply accordingly:

Provided also that where the assessee exercises the option to withdraw the application under sub-section (1) of section 245M, the period of limitation available under this section to the Assessing Officer for making an order of assessment, reassessment or recomputation, as the case may be, shall, after the exclusion of the period under sub-section (5) of the said section, be not less than one year; and where such period of limitation is less than one year, it shall be deemed to have been extended to one year:

Provided also that for the purposes of determining the period of limitation under sections 149, 154 and 155, and for the purposes of payment of interest under section 244A, the provisions of the fourth proviso shall apply accordingly.

Explanation 2.—For the purposes of this section, where, by an order referred to in clause (i) of sub-section (6),—

(a) any income is excluded from the total income of the assessee for an assessment year, then, an assessment of such income for another assessment year shall, for the purposes of section 150 and this section, be deemed to be one made in consequence of or to give effect to any finding or direction contained in the said order; or

(b) any income is excluded from the total income of one person and held to be the income of another person, then, an assessment of such income on such other person shall, for the purposes of section 150 and this section, be deemed to be one made in consequence of or to give effect to any finding or direction contained in the said order, if such other person was given an opportunity of being heard before the said order was passed."

6. Undisputedly, in the facts of the present case, the order of the Tribunal had come to be passed after 01 April 2019, and consequently the prescription of 09 months as appearing in the principal part of sub-section (3) would have to be read as 12. When 12 months are computed from the order of 21 October 2020, it is ex facie evident that the jurisdiction and authority inhering the respondents to frame an order of assessment pursuant to a direction framed by the Tribunal would have undoubtedly come to an end on 21 October 2021 and no longer exists today.

7. We, consequently, allow the instant writ petition and render a declaration that any assessment that may be now proposed for AY 2010-11 would be clearly time barred and contrary to the mandate of Section 153(3) of the Act. As a consequence to the above, the notices of 06 March 2023 and 19 March 2023 are hereby quashed and set aside.

YASHWANT VARMA, J.

HARISH VAIDYANATHAN SHANKAR, J.

MARCH 11, 2025/v