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

% *Date of Decision: 07.07.2025*

\+ W.P.(C) 17793/2024

ACUITY KP SOLUTIONS (INDIA) PRIVATE LIMITED .....Petitioner

Through: Mr. Manuj Sabharwal, Mr. Drona Negi & Mr. Devvrat Tiwari, Advocates.

versus

DEPUTY COMMISSIONER OF INCOME-TAX CIRCLE 1(1), DELHI & ORS. .....Respondents

Through: Mr. Sanjeev Menon, JSC, Mr. Rahul Singh, JSC & Mr. Gaurav Kumar, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE TEJAS KARIA

ORDER

% **07.07.2025**

VIBHU BAKHRU, J. (*ORAL*)

CM APPL. 20781/2025

1. For the reasons stated in the Application, the same is allowed and the amended Memo of Parties is taken on record.

2. The Application stands disposed of.

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3. The Petitioner has filed the present Petition, *inter alia*, praying as under:

> *"a. Issue a writ in the nature of mandamus or any other appropriate writ(s), order(s), direction(s) to the effect that the assessment*

> *proceedings (upon remand) for AY 2007-08 against the Petitioner have become time barred owing to failure to pass the final assessment order under s.143(3) of the Income-tax Act, 1961 ("Act") pursuant to the appellate order dated 20.07.2012 passed by the Ld. ITAT (Annexure P-1) and issue appropriate directions for release of refund of Rs. 67,86,402 along with statutory interest;"*

4. The Petitioner had filed its return of income for Assessment Year [**AY**] 2007-08 declaring its income as Nil and claimed a refund of ₹7,86,402/-. The Petitioner's return was picked up for scrutiny and a notice under Section 143(2) of the Act was issued on 16.09.2008. Thereafter, on 11.10.2010, a reference was made to the Transfer Pricing Officer [**TPO**]. By an order dated 11.10.2010, the learned TPO made an upward adjustment of ₹2,48,74,395/- on account of determining the Arm's Length Price [**ALP**] higher than the value of foreign transactions as disclosed. On 06.12.2010, a draft assessment order was passed by the Assessing Officer [**AO**], *inter alia*, making an adjustment of ₹2,44,67,485/-.

5. The Petitioner filed its objections before the Dispute Resolution Panel [**DRP**], which were disposed of by an order dated 01.08.2011. In terms of the said order, DRP directed the learned TPO to recompute the margin for determination of ALP.

6. The final assessment order was passed on 18.10.2011 whereby the addition of ₹2,48,74,395/- was made on account of transfer pricing issues.

7. The Petitioner appealed the aforementioned final assessment order before the learned Income Tax Appellate Tribunal [**ITAT**] being ITA No.5467/Del/2011 captioned "*M/s Exevo India Private Limited v. Deputy Commissioner of Income Tax Circle 10(1), New Delhi*".

8. The aforesaid Appeal was allowed by an order dated 20.07.2012. The

learned ITAT faulted the final assessment order on the ground that it was passed in violation of principles of natural justice. The learned ITAT held that it was necessary that the Petitioner be provided with all the information obtained during the course of the assessment proceedings to enable the Petitioner to respond the same.

9. In the aforesaid view, the learned ITAT remanded the matter to the AO for consideration afresh after providing the Petitioner a reasonable opportunity of being heard.

10. The notice in the present Petition was issued on 23.12.2024. The petition was listed on a number of occasions thereafter. Adjournments were sought by the learned counsel for the Revenue on more than one occasion to obtain instructions including whether any appeal effect order has been passed. However, the Revenue has not filed the Counter Affidavit as yet. The learned counsel appearing for the Revenue submits that the relevant files are untraceable. In view of the above, we accept the Petitioner's contention that the final assessment order has not been passed pursuant to the order dated 20.07.2012 passed by the learned ITAT.

11. Undisputedly, the time for passing an assessment order has since elapsed and, therefore, any further proceedings before the AO in respect of AY 2007-08 pursuant to the order dated 20.07.2012 passed by the learned ITAT would now be barred by limitation.

12. Concededly, this issue is covered by the earlier decision of this Court in ***Nokia India (P) Ltd. v. Deputy Commissioner of Income Tax:*** (2017) 85 Taxman.com 291 (Delhi).

13. In view of the above, the return is to be accepted and the refund claimed by the Petitioner as well as further payments made by the Petitioner

are required to be refunded alongwith interest in accordance with law. The AO is directed to refund the amounts due to the Petitioner as expeditiously as possible and preferably within a period of 12 (twelve) weeks from date.

14. The Petition is allowed in the aforesaid terms.

VIBHU BAKHRU, J

TEJAS KARIA, J

JULY 07, 2025/ *'A'*

Click here to check corrigendum, if any