IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

201 ****

CWP-893-2006 (O&M)
Reserved on : 21.01.2026
Pronounced on : 28.01.2026

MOTOROLA INDIA PVT. LTD. ...Petitioner

Vs.

ASSISTANT COMMISSIONER AND ORS. …Respondents

And

Sr. No.	Case No.	Petitioner(s)	Respondent(s)
2.	CWP-882-2006 (O&M)	Motorola India Pvt. Ltd.	Assistant Commissioner and Ors.
3.	CWP-902-2006 (O&M)	Motorola India Pvt. Ltd.	Assistant Commissioner and Ors.
4.	CWP-908-2006 (O&M)	Motorola India Pvt. Ltd.	Assistant Commissioner and Ors.

CORAM:- HON'BLE MR. JUSTICE JAGMOHAN BANSAL
HON'BLE MR. JUSTICE AMARINDER SINGH GREWAL

Present:- Mr. Nageshwar Rao, Advocate *(through V.C.)* with
Mr. Parth, Advocate *(through V.C.)* and
Mr. Ashim Aggarwal, Advocate
for the petitioner(s)

Mr. Varun Issar, Sr. Standing Counsel
for respondent-Income Tax Department
***

JAGMOHAN BANSAL, J.

1. As common issues are involved in the captioned petitions, with the consent of both sides, the same are hereby disposed of by this common order. For the sake of brevity and convenience, facts are borrowed from **CWP-893-2006**.

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2. The petitioner is assailing notice dated 31.03.2005 under Section 148 of Income Tax Act, 1961 (for short '1961 Act') for the Assessment Year (for short 'AY') 1999-2000 with respect to reopening of assessment.

3. The Assessing Authority issued notices under Section 147 read with 148 of 1961 Act for reassessment of returned income for the AY 1998-99, 1999-2000, 2000-01 and 2001-02. The assessee filed return pursuant to notice and demanded reasons for initiating reassessment proceedings. The assessing authority supplied reasons for initiating proceedings for reassessment. The petitioner filed objections to reasons supplied by Assessing Authority. The Assessing Authority rejected objections of the petitioner.

4. This Court issued notice of motion and vide order dated 20.01.2006 permitted the Assessing Authority to proceed with assessment, however, restrained from passing final order. Undisputedly, the Assessing Authority has not passed final assessment order. The Assessing Authority has not even proceeded to frame assessment. This Court had permitted the Assessing Authority to proceed with assessment and not to pass final order, however, Assessing Authority did not even proceed with assessment proceedings.

5. Learned counsel for the petitioner submits that foundation of initiating proceedings is order passed by Transfer Pricing Officer with respect to AY 2002-03. The Legislature amended Section 92 w.e.f. 01.04.2002 and by amendment concept of transfer pricing was introduced. The Transfer Pricing Officer passed order dated 14.03.2005 whereby it was concluded that there should be addition of 12.24% in the remuneration received by assessee.

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Taking cue from said assessment, the respondent has initiated proceedings with respect to Assessment Years 1999-2000 to 2001-02. In the absence of concept of transfer pricing prevailing during those assessment years,the Assessing Authority could not rely upon order dated 14.03.2005 passed with respect to Transfer Pricing Officer. The petitioner in the present form came into existence w.e.f. 04.10.2001. The respondent has wrongly relied upon order of transfer pricing. Neither during the relevant assessment years, the petitioner existed in the present form nor concept of transfer pricing was prevailing, thus, formula of 12.24% which is foundation of transfer pricing has wrongly been proposed to be applied for the assessment years in question. Transfer pricing order for AY 2002-03 notes that income from chip design activity was received after 04.10.2001. The said order further notices that chip design activity earned 5.81% margin and comparable transactions between unrelated parties yielded 12.24% during said year. During AY 2002-03, other international transactions including software services were accepted without any adjustment of margin. It is absurd and unfathomable to assume that such deemed income escaped assessment during AY 1998-99 to 2001-02. Emphatic and positive assertion by Transfer Pricing Officer that such transaction was not existing before 04.10.2001 cannot be ignored.

6. In support of his contentions, learned counsel for the petitioner relied upon judgment of Hon'ble Supreme Court in ***"Union of India Vs. Rai Singh Deb Singh Bist",*** **[1973] 3 SCC 581** and ***"ITO Vs. Lakhmani Mewal Das"*** **[1976] 3 SCC 757.**

7. *Per contra,* learned counsel for the respondent-Revenue submits that there is no bar to invoke Section 147 read with 148 on the basis of

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transfer pricing order. The concept of transfer pricing came into force w.e.f. 01.04.2002, however, Section 92 was existing even prior to 01.04.2002. As per Section 92, in case of transaction between resident in India and entity outside India, addition could be made if it is found that fair consideration has not been disclosed. A Division Bench of this Court in ***"Coca Cola India Inc. Vs. Additional Commissioner of Income-tax",*** **[2011] 336 ITR 1 (SC)** has already held that order of transfer pricing can be relied upon for assessment years prior to 01.04.2002. Judgment of this Court stands upheld by Hon'ble Supreme Court.

8. We have heard learned counsel for the parties and perused the record.

9. From the perusal of record and arguments of both sides, it is evident that Assessing Authority has issued notice under Section 147 read with Section 148 of 1961 Act for reassessment of returned income for the AY 1998-99 to 2001-02. The petitioner is claiming that Assessing Officer is wrongly relying upon order passed by Transfer Pricing Officer. The said order relates to AY 2002-03 and cannot be relied upon for reopening assessment of 1998-99 to 2001-02. The assessee was not existing in those years in the present form. The respondent in transfer pricing order has noticed that chip design activity was carried out by assessee after 04.10.2001. In the absence of activities carried out in the relevant AY, it is unfair and unethical to reframe assessment on the basis of activities carried out in subsequent years.

10. The Hon'ble Supreme Court in ***Lakhmani Mewal Das (supra)*** has held that reasons for the formation of belief must have a rational

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connection with or relevant bearing on the formation of belief. Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the Income Tax Officer and the formation of his belief that there has been escapement of the income. Action of reopening assessment cannot be taken on the basis of wholly vague, indefinite, far-fetched and remote information. The reason for the formation of belief must be held in good faith.

11. A Division Bench of this Court in ***Coca Cola India Inc. (supra)*** while adverting to issues involved herein after noticing a plethora of judgments has held that Section 147 is not in any manner controlled by Section 92 nor there is any limit to consideration of any material having nexus with the opinion on the issue of escapement of assessment of income. Interference with the notice or reassessment is called for only where extraneous or absurd reasons are made basis for opinion proposing to reassess. The Court has further held that order of Transfer Pricing Officer can be taken into account for reassessment of period prior to amendment. Relevant extracts of the judgment read as:-

> ***"10.*** *The following questions arise for consideration:*
> *"(i) Whether inapplicability of the unamended provisions of section 92 of the Act (as it stood prior to April 1, 2002) to the petitioner created a bar to reassessment of escaped income of the petitioner ?*
> *(ii) Whether the order passed by the Transfer Pricing Officer under Chapter X after April 1, 2002, could be one of the reasons for reassessment for period prior to introduction of the amended Chapter X in the Act ?*
> *(iii) Whether the provisions of Chapter X are attracted when both the parties to a transaction are subject to tax in India, in*

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the absence of allegation of transfer of profits out of India or evasion of tax ?"

(iv) Whether opportunity of being heard is required before referring the matter of determination of arm's length price to the Transfer Pricing Officer?"

XXXX XXXX XXXX XXXX

***"45.** We now deal with questions framed in paragraph 10 above.*

Reg : Question No. (i)

***46.** The objection of learned counsel for the petitioner, as already mentioned above, is two fold : (a) Reference to inapplicable provisions of section 92 of the Act, as it stood prior to the amendment with effect from April 1, 2002, and (b) irrelevance of the order of the Transfer Pricing Officer under Chapter X passed in respect of a subsequent assessment year.*

***47.** We have already reproduced section 147 of the Act above and its applicability requires formation of opinion that income escaped assessment. The said provision is not in any manner controlled by section 92 of the Act nor is there any limit to consideration of any material having nexus with the opinion on the issue of escapement of assessment of income. Interference with the notice for reassessment is called for only where extraneous or absurd reasons are made the basis for opinion proposing to reassess. Apart from the fact that the Assessing Officer has given other reasons, it cannot be held that the material relied upon by the Assessing Officer for proposing reassessment is irrelevant. Whether or not the said material should be finally taken into account for reassessment is a matter which has to be left open to be decided by the Assessing Officer after considering the explanation of the assessee. We can only mention that having regard to the relationship of the petitioner to its associate company, it cannot be claimed that the price mentioned by it must be accepted as final and may not be looked at by the Assessing Officer."*

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Reg : Question No. (ii)

"51. *As regards the question whether order of the Transfer Pricing Officer could be taken into account, we do not find any objection to the same being done. As already observed, requirement of section 147 of the Act is fulfilled if the Assessing Officer can legitimately form an opinion that income chargeable to tax has escaped assessment. For forming such opinion, any relevant material can be considered. The order of Transfer Pricing Officer can certainly have nexus for reaching the conclusion that income has been incorrectly assessed or has escaped assessment. In the present case, the said material came to the notice of the Assessing Officer subsequent to the assessment. There is no grievance that the provisions of sections 148 to 153 of the Act have not been followed. In such a situation, it cannot be held that the notice proposing reassessment is vitiated merely because one of the reasons referred to the order of the Transfer Pricing Officer."*

In the case in hand, the Assessing Officer is relying upon order of Transfer Pricing Officer. The petitioner is primarily disputing that few activities were carried out by it in subsequent years. The rate of margin cannot be applied. The petitioner during the relevant AY was not existing in the current form. All these questions can be raised before the Assessing Officer. No final order has been passed. The petitioner would get full opportunity at the stage of framing assessment. There seems no *mala fide* or extraneous consideration on the part of Assessing Officer. It cannot be called that reasons recorded by Assessing Officer are either wholly irrelevant or ungermane to the object sought to be achieved. Interference at this stage is warranted where extraneous or absurd reasons are made basis for opinion proposing to reassess. The Assessing Officer has duly recorded reasons and

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material relied upon by him cannot be declared wholly irrelevant or extraneous.

12. In the wake of above discussion and findings, we are of the considered opinion that the instant petitions deserve to be dismissed and accordingly dismissed. It is made clear that we have not expressed opinion on merits and Assessing Officer shall adjudicate the matter without being influenced by this order.

13. Pending application(s), if any, also stands disposed of.

(JAGMOHAN BANSAL)
JUDGE

(AMARINDER SINGH GREWAL)
JUDGE

January 28, 2026
Deepak DPA

Uploaded on: January 29, 2026

Whether Speaking/reasoned Yes/No
Whether Reportable Yes/No

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