

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 14TH DAY OF FEBRUARY, 2019

BEFORE

THE HON'BLE MRS. JUSTICE S.SUJATHA

WRIT PETITION NO.3533 OF 2019 (T-IT)

Between:

Mphasis Ltd.
Bagamane World Technology Centre,
WTC-3, 1st Floor,
K.R. Puram, Marathahalli Outer Ring Road,
Doddanekundi,
Bengaluru – 560 048.
Represented by its
Executive Vice President & CFO
Mr. Venkatasubramnian Suryanarayanan,
Aged about 59 years. ...Petitioner
(By Sri. T. Suryanarayana, Advocate)

And:

1. Assistant Commissioner of Income-Tax,
Circle-4(1)(2)
Room No.230, 2nd Floor,
BMTC Depot Building, 80 Feet Road,
Koramangala,
Bengaluru – 560 095.
2. The Joint Commissioner of Income Tax
Special Range-4,
Room No.245, 2nd Floor,
BMTC Depot Building, 80 Feet Road,
Koramangala,
Bengaluru – 560 095.
3. Principal Commissioner of Income-tax -4
BMTC Building,

Koramangala 6th Block,
Bengaluru – 560 085.

...Respondents

(By Sri. E.I. Sanmathi, Advocate)

This Writ petition is filed under Article 226 of the Constitution of India praying to declare that the impugned proceedings initiated by respondent No.1 under Section 147 read with Section 148 of the Act barred by limitation and opposed to the said provisions and therefore without jurisdiction and etc.,

This Writ Petition coming on for Preliminary Hearing this day, the Court made the following:

O R D E R

The petitioner has challenged the proceedings initiated by respondent No.1 under Section 147 read with Section 148 of the Income Tax Act, 1961 ('the Act' for short) *inter alia* challenging the re-assessment order dated 28.12.2018 at Annexure-F relating to the Assessment Year 2011-2012 and the demand notice dated 28.12.2018 at Annexure-G issued by respondent No.2 under Section 156 of the Act.

2. The petitioner during the course of its business made certain payments in the nature of sub-contracting charges and sales commission to its

associated enterprises situated outside India for the services rendered by the said associated enterprises in the nature of on-site development of software and marketing/sales services. An order came to be passed by Additional Commissioner of International Taxation, Range-19 under Section 195(2) of the Act approving the remittance of payments in the nature of sub-contracting by the petitioner to its associated enterprises outside India without deducting tax at source in terms of Section 195 of the Act, which was till 30.09.2004. The Assessing Officer passed an order under Section 201 (1) of the Act treating the petitioner to be an assessee-in-default for non-deduction of tax at source under Section 195 of the Act in respect of the above payments on the basis that they were taxable in India and levied consequential interest under Section 201(1A) of the Act. The return of income filed by the Assessee for the assessment year 2011-2012 was taken up for assessment under Section 143(3) of the Act and

reference was made to the Transfer Pricing Officer (TPO) for determination of the Arm's Length Price. Respondent No.1 passed an order under Section 143(3) of the Act on 29.05.2015 subsequent to an order passed by TPO under Section 92CA (3) of the Act.

3. Respondent No.1 issued notice dated 23.03.2018 under Section 148 of the Act proposing to re-assess the petitioner for the assessment year 2011-2012. Thereafter, the petitioner filed a letter in response to the notice issued under Section 148 of the Act requesting respondent No.1 to treat the return of income filed on 29.03.2013 as the return of income filed in response to the notice and called upon the officer to furnish a copy of the reasons recorded for re-opening the assessment for the assessment year 2011-12 and the sanction accorded in terms of Section 151 of the Act. Respondent No.2 vide a letter dated 28.09.2018 furnished a summary of the reasons recorded for re-opening of assessment

for the Assessment Year 2011-12, together with a copy of the sanction accorded by the Principal Commissioner of Income Tax, Bengaluru – 4. The petitioner filed its objections *inter alia* challenging the action of respondent Nos.1 and 2 in invoking the provisions of Section 147 on the ground that such proceedings are without jurisdiction and barred by limitation. Respondent No.2 has passed re-assessment order under Section 143(3) read with Section 147 of the Act negating all the objections raised by the petitioner as to limitation, jurisdiction and recomputing the total income of the petitioner. Aggrieved by the same, this petition is filed by the assessee.

4. Heard the learned counsel Sri.T.Suryanarayana, for the petitioner as well as the learned counsel Sri. E.I. Sanmathi, for respondents.

5. The arguments of the learned counsel for the petitioner are: firstly, the re-assessment order

impugned herein is passed without jurisdiction and it is barred by limitation and secondly, that the objections filed pursuant to the notice issued under Section 148 of the Act has not been considered and disposed of by the Assessing officer prior to passing of re-assessment order.

6. Learned counsel placing reliance on the Division Bench judgment of this Court in the case of **Deepak Extrusions (P.) Ltd., Vs. Deputy Commissioner of Income Tax, Central Circle 1(4), Bengaluru** reported in **(2017) 80 taxmann.com 77 (Karnataka)** would submit that the law is well settled that if the assessee desires to seek the reasons for issuing the notice, the Assessing Officer is bound to furnish the reasons and upon the receipt of such reasons, the assessee is entitled to file the objections to the issuing of the notice and the Assessing Officer thereafter is bound to dispose of the same by passing a speaking order. In the instant case, the re-assessment order passed by the

Assessing Officer without passing a speaking order on the objections filed by the assessee is unjustifiable and cannot stand test of well settled law as aforesaid.

7. Learned counsel for the Revenue-respondents inviting the attention of the Court to the letter dated 28.09.2018 at Annexure-D to the writ petition would submit that the primary objections filed by the assessee as per the letter dated 20.12.2018 has been considered by the Assessing Officer and same is reflected in the said letter, which requires to be considered by this Court. The objections filed by the assessee being disposed of by the Assessing Officer prior to passing of re-assessment order, subsequent objections filed by the petitioner to the main, the same was considered while drawing the assessment order. Hence, no interference is called for by this Court and the re-assessment order requires to be confirmed dismissing the writ petition.

8. I have given my careful consideration to the arguments advanced by the learned counsel for the parties and perused the material on record.

The petitioner by letter dated 10.04.2018 requested the Assessing Officer to disclose the reason for invoking the provisions of Section 147 read with Section 148 of the Act by issuing notice. The letter dated 28.09.2018 of the Assessing Officer (Annexure-D) refers to the letter dated 10.04.2018 and it is apt to quote the relevant paragraph of the said letter which reads thus:-

“The case has thus been picked up for reopening on account of non-deduction of TDS on payments made on account of Software development services and marketing services as laid above, with due approval of the competent authority, copy of which is enclosed herewith.

The reply to the query raised in the letter under reference thereby stands disposed from our end.”

The aforesaid letter indicates that the Assessing Officer has considered the query raised in the letter dated 10.04.2018 and the same was disposed of. But, by no stretch of imagination it can be held to be

a speaking order passed by the Assessing Officer considering the objections raised by the assessee. Indeed it was a request made by the assessee to furnish the reasons recorded for initiating the proceedings under Section 147 read with Section 148 of the Act. The objections raised by the petitioner on 20.12.2018 to the summary of reasons recorded provided by the Assessing Officer has not been disposed of by a speaking order. However, the Assessing Officer proceeded to pass the re-assessment order impugned herein, which clearly demonstrates that the mandatory requirement of disposing of the objections by the Assessing Officer has not been complied with and on this ground alone, the order impugned deserves to be set aside.

9. This view is fortified by the division bench judgment of this Court in **Deepak Extrusions (P.) Ltd.,’s** case (supra), wherein this Hon’ble Court has observed thus:-

“11. If the facts of the present case are examined in the light of aforesaid legal position, it is an admitted position that the reasons for re-opening of the assessment by issuing of the notice under Section 148 of the Act were supplied to the appellant assessee. It is also admitted position that the appellant assessee after receipt of such reasons raised objections. It is also undisputed position that the Assessing Officer did not dispose of the objections prior to proceeding with the assessment further and proceeded to pass the order for assessment. Under the circumstances, it can't be said that the mandatory procedure of disposal of the objection by Assessing Officer before proceeding with the assessment has not been followed and exercise of power can be said as not only vitiated, but the order of assessment cannot be sustained.

12. If the decision of the Assessing Officer is illegal on the face of it, in our view, it would fall in the exceptional category of making departure from the normal principles of self impose limitation of not to interfere in a matter where there is existence of alternative statutory remedy.”

10. The aforesaid judgment has been followed by this Court in ***M/s. Wartyhully Estates Limited Vs. The Income Tax Officer and another*** (W.P. No.4679/2018) and in ***M/s. Mindtree Limited Vs. The Assistant Commissioner of Income Tax*** (W.P.

No.63236/2016) wherein the re-assessment order passed by the Assessing Officer as well as demand notice have been set aside.

11. In view of the aforesaid, the writ petition stands allowed. The assessment order at Annexure-F dated 28.12.2018 and demand notice at Annexure-G dated 28.12.2018 are quashed. However, the Assessing Officer shall be at liberty to proceed with the matter in accordance with law. All rights and contentions of the parties are left open.

**Sd/-
JUDGE**

MBM