IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 972 of 2022

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE J.B.PARDIWALA

and
HONOURABLE MS. JUSTICE NISHA M. THAKORE

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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M/S SABIC INNOVATIVE PLASTICS INDIA PRIVATE LIMITED
Versus
DEPUTY COMMISSIONER OF INCOME TAX, CIRCLE 2(1)(1)

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Appearance:
MR DHINAL A SHAH(12077) for the Petitioner(s) No. 1
for the Respondent(s) No. 1,2

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CORAM:**HONOURABLE MR. JUSTICE J.B.PARDIWALA**
and
HONOURABLE MS. JUSTICE NISHA M. THAKORE

Date : 24/01/2022

ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)

1. By this writ application under Article 226 of the Constitution of India, the writ applicant has prayed for the following reliefs:

"8.

A. YOUR LORDSHIPS may be pleased to allow present Petition;

B. YOUR LORDSHIPS may be pleased to issue a Writ of Certiorari/Mandamus or a Writ in the nature of Certiorari/Mandamus or any other appropriate Writ, Order or Direction to restore and hold the Return of Income for the Assessment Year 2010-2011 as filed by the Petitioner herein as final;

C. YOUR LORDSHIPS may be pleased to issue a Writ of Certiorari/Mandamus or a Writ in the nature of Certiorari/ Mandamus or any other appropriate Writ, Order or Direction upon Respondent No.1 to refund INR 2,92,59,526/- (INR Two Crore Ninety Two Lakh Fifty Nine Thousand Five Hundred Twenty Six only) claimed and received towards tax liability for the Assessment Year 2010-2011 along with 9% interest thereon from the date of expiry of limitation period i.e. 31/12/2017;

D. YOUR LORDSHIPS may be pleased to restrain Respondent No.2 their men, employees, subordinates, agents or any other persons claiming or acting through or under them, from passing any orders and/or directions whatsoever in regards to Return of Income filed by the Petitioner herein for Assessment Year 2010-2011, till the final disposal of the present petition;

E. YOUR LORDSHIPS may be pleased to pass any such other orders and / or directions as it may deem fit in the interest of justice."

2. We have heard Mr. Dhinal Shah, the learned counsel appearing for the writ applicant. It appears from the materials on record that the writ applicant herein preferred an Appeal before the Income Tax Appellate Tribunal, "A" Bench, Ahmedabad, being I.T. (TP) A No.367/Ahd/2015 for the A.Y. 2010-11 against the order of the Transfer Pricing Officer passed under Section 143(3) read with Section 92CA read with Section 144C(13) of the Income Tax Act dated 23.12.2014 for the A.Y. 2010-11. The Appeal filed by the writ

applicant herein came to be disposed of by the Tribunal vide its order dated 07.08.2015 in the following terms:

> *"7. From the above, it is evident that first entry is dated 11.11.2014 which records the issue of notice for hearing on 28.11.2014. On 28.11.2014, there is a noting as per which the assessee was asked to file a chart/submission and time was granted up to 05.12.2014. Thereafter, there is no noting on the order-sheet either for any hearing on 05.12.2014 or with regard to passing of the order. As per the photocopy of the order filed by the assessee along with appeal memo, the date of the order of the DRP is 27.11.2014 which is certainly prior to first date of hearing allowed by DRP. The file of the DRP is produced before us in which there is an original order which is signed by all the three Members of DRP. However, no date is put by any of the Member of the DRP after their signature; but, on the first page of the original order the date is 09.12.2014. In the order of the DRP at page No.10, paragraph No. 3.4, the DRP has discussed about the arguments put forward by the assessee in its support. However, there is no mention of the written submissions and the detailed explanation claimed to have been furnished by the assessee with DRP on 03.12.2014. The assessee has filed before us the photocopy of reply dated 03.12.2014, which is placed at page No.905 of the assessee's paper-book. From the said copy, it is evident that it was furnished with the office of the Income Tax Officer. The date of receipt is not clearly legible; however, month is December 2014. The assessee was asked to show the original copy of such letter which assessee was unable to produce at the time of hearing before us. From the above seal, which is depicted on the photocopy of the letter dated 03.12.2014. it is not evident that the said letter was filed in the DRP because the receipt shows office of the Income Tax Officer and date is also not legible. After considering the totality of the facts and the arguments of both the sides, in our opinion, it would meet the ends of justice if the order of the DRP is set aside, because in our opinion certainly adequate opportunity of being heard is not allowed by the DRP to the assessee. There are different dates mentioned in the order of the*

DRP supplied to the assessee and the order in the file of the DRP. Not satisfactory explanation for this variation in dates in both the orders could be given by the Id. CIT-DR. In the order-sheet there is a noting of only one date of hearing, i.e., 28.11.2014 on which date the assessee was directed to file chart/submission and time was granted up to 05.12.2014. However, thereafter there is no other noting whether any further hearing took place or not. Considering the totality of these. facts, we are of the opinion that the DRP has passed the order without allowing adequate opportunity of being heard to the assessee. We, therefore, set aside the order of the DRP and restore the matter back to its file. We direct the DRP to allow adequate opportunity of being heard to the assessee, and thereafter pass a speaking order in respect of assessee's objections in accordance with law. Since we have set aside the order of the DRP, the assessment order passed by the Assessing Officer in accordance with the directions of the DRP cannot survive. We, therefore, set aside the assessment order dated 23.12.2014 and restore the same back to the file of the Assessing Officer. We direct him to pass the fresh assessment order in accordance with law after receiving fresh direction of the DRP. "

3. Thus, it appears from the aforesaid that the Tribunal set aside the order of the DRP and also the assessment order dated 23.12.2014. The matter was restored to the file of the Assessing Officer with a direction to pass a fresh assessment order in accordance with law after receiving fresh appropriate directions from the DRP.

4. Mr. Shah, the learned counsel appearing for the writ applicant pointed out that till this date, the DRP has not done anything. Mr. Shah took us through the various representations filed by his client as regards the subject matter addressed to the Deputy Commissioner of Income Tax. We take notice of one such representation dated 18.09.2020 which is at page 126 of the paper

book. The same read thus:

> *"18 September, 2020*
>
> *Deputy Commissioner of Income Tax*
> *Circle-2(1)(1)*
> *Baroda.*
>
> *Dear Sir,*
>
> *Re: SABIC Innovative Plastics India Private Limited ("We')*
> *Assessment Year ('AY') 2010-2011*
> ***PAN: AABCE7565N***
> *Order giving effect to the Order of Hon'ble Income Tax Appellate Tribunal (ITAT)*
>
> *We refer to the order of Hon'ble ITAT dated 7 August 2015, setting aside the matter to the file of Hon'ble Dispute Resolution Panel ('DRP') and directing Your Goodself to pass the fresh assessment order in accordance with revised directions received from Hon'ble DRP. Copy of order of Hon'ble ITAT is attached as **Annexure 1**.*
>
> *In this regard, we would like to submit as under:*
>
> *1. Since the original assessment order dated 23 December 2014 raising a demand of Rs 2,67,83,930 is set aside and no order is passed pursuant to direction of Hon'ble ITAT within the time prescribed under section 153(3) of the Act, **assessment proceeding has become time barred**.*
>
> *2. We have already filed various letters from time to time with your Goodself as well as learned Addl. Commissioner of Income tax and Pr. Commissioner of Income tax, which has not yielded any response till date. Acknowledgement copies of all the letters filed are collectively enclosed as **Annexure 2A to 2H**.*
>
> *3. As the matter is time barred, taxes already paid would be refundable to us. We would be eligible for refund amounting to Rs. 3,59,65,324 (after including interest of*

Rs. 67,05,798 under section 244A(1) of the Act). For your ready reference, working of refund due with calculation of interest u/s 244A is attached as ***Annexure 3****.*

4. ***Additionally, we are also entitled to the additional interest at 3% per annum as per section 244A(1A) for delay in issuance of refund beyond the time limit prescribed under section 153(3) of the Act.***

Deputy Commissioner of Income
Circle 2(1)(1), Baroda
18 September 2020
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We, once again, request your Honor to kindly pass the appropriate order and grant us the refund all with applicable interest till the date of passing order.

In case Your Good Self requires any information / clarifications, we would be glad to furnish the same

Yours faithfully.

Authorised Signatory
End: As above"

5. We also take notice of the last representation dated 12.02.2021 addressed to the Additional Commissioner of Income Tax, Vadodara, which is at page 134 of the paper book. The same read thus:

"12 February, 2021

The Additional Commissioner of Income Tax
Range 2(1)
Baroda.

Dear Sir,

Ref.: ***SABIC Innovative Plastics India Private Limited***

("We')
Assessment Year ('AY') 2010-2011
PAN: AABCE7565N
Reminder 3-Order giving effect to the Order of Hon'ble Income Tax Appellate Tribunal, Ahmedabad (ITAT)

*We refer to the order of Hon'ble ITAT **dated 7 August 2015**, setting aside the matter to the file of Han'ble Dispute Resolution Panel (DRP) and directing learned Deputy Commissioner of Income. Tax Circle-2(1)(1) Baroda ('Assessing Officer' or 'AO') to pass the fresh assessment order in accordance with revised directions received from Hon'ble DRP*

*In this regard, we have filed letter with Your Goodself stating that the **subject proceedings have become time barred**. The original assessment order dated 23 December 2014 raising a demand of Rs 2,67,83,930 was set aside and no order has been passed pursuant to direction of Hon'ble ITAT within the time prescribed under section 153(3) of the Act*

As the matter is time barred now, we are entitled for a refund of taxes already paid i.e. Rs 3,66.96.812 (after including Interest of Rs. 74,37,286 under section 244A(1) of the Act). Additionally, we are also entitled to the additional interest at 3% per annum as per section 244A(1A) for delay in issuance of refund beyond the time limit prescribed under section 153(3) of the Act

Therefore, we once again request your Goodself to pass the necessary directions to learned AO for passing of appropriate order and issue the refund due to us.

In case Your Good Self requires any information/ clarifications, we would be glad to furnish the

Yours faithfully

Authorised Signatory

End As above
CC: Deputy commissioner of Income Tax, Circle -2(1)(1),

Baroda."

6. It appears that the Deputy Commissioner has not paid heed to any of the above representations filed by the writ applicant so far.

7. The issue raised by the writ applicant in the present writ application appears to be prima facie covered by a direct decision of the Madras High Court in the case of ***Roca Bathroom Products (P.) Ltd. Vs. Dispute Resolution Panel-2, Bangalore*** reported in ***[2021] 127 taxmann.com 332 (Madras)***, wherein the Madras High Court observed from para 13 as under:

> "*13. Under the scheme of assessment in Section 144C(1), the Assessing Officer, notwithstanding anything to the contrary contained in the Act, is to forward a draft of the proposed order of assessment to the assessee in question, if he is of the view that a variation is called for in the income or loss returned by that assessee which would be prejudicial to its interests. The assessee in response, under sub-section (2), has 30 days to either file its acceptance of the proposed variation or objections to the variations with the DRP and the Assessing Officer. The Assessing Officer is to thereafter, under subsection (3), complete the assessment on the basis of the draft order if the assessee has intimated its acceptance of the order or has not filed objections to the same within the time stipulated. In terms of sub-section (4), the Assessing Authority is to pass an order of assessment within one month from the end of the month in which the acceptance of the assessee is received or the period for filing of objections expires."*

8. Thus, the Madras High Court addressed itself on the issue whether the proceedings before the DRP are circumscribed by the limits of time imposed by Section 153 of the Act. Before the Madras High Court, the case of the assessee was that the

proceedings before the DRP are definitely circumscribed by the limits of time imposed by Section 153 of the Act whereas the revenue took the stance that the proceedings before the DRP are unfettered by time.

9. The Madras High Court ultimately took the view as aforesaid that the proceedings before the DRP do get circumscribed by the limits of time imposed by Section 153 of the Act.

10. Our attention was also drawn to one decision of the Bombay High Court in the case of ***Principal Commissioner of Income-tax-15 Vs. Lionbridge Technologies (P.) Ltd.*** reported in ***[2018] 100 taxmann.com 413 (Bombay)***, wherein the Assessing Officer had passed the final assessment order, which was sought to be corrected by issue of a corrigendum. The High Court took the view that as the time limit to pass the draft assessment order had expired, the order of the Assessing Officer was without jurisdiction. We also take notice of one decision of the Delhi High Court in the case of ***Nokia India (P.) Ltd. Vs. Deputy Commissioner of Income-tax*** reported in ***[2017] 85 taxmann.com 291 (Delhi)***, wherein the Delhi High Court observed that the Assessing Officer was required to pass a fresh order of assessment having regard to the order passed by the Tribunal under Section 254 of the Act cancelling the assessment framed by the Assessing Officer. While observing so, the Delhi High Court further observed that the period of limitation prescribed under Section 153(2A) of the Act would apply. In short, the Delhi High Court addressed itself on the question as posed in para 25 of the said judgment, whether remand is to the TPO or the DRP would not make any difference so long as the ultimate result of the remand is a fresh assessment of the issue. In such circumstances, the time limit for completing

that exercise would be governed by Section 153(2A) of the Act.

11. It is very unfortunate to note that although the writ applicant has been knocking the doors of the Deputy Commissioner of the Income Tax, Vadodara, past almost two years, yet the Deputy Commissioner has not even bothered to give any formal reply to even one of the representations.

12. In such circumstances referred to above, we dispose of this writ application with a direction to the respondent No.1 herein to take up the entire matter of the writ applicant for consideration at the earliest and take an appropriate decision in accordance with law, more particularly, the law which has been discussed in this order, within a period of four weeks from the date of the receipt of the writ of this order and pass an appropriate order in writing. The decision that may be taken by the respondent No.1 shall be communicated to the writ applicant.

With the aforesaid, this writ application stands disposed. Direct service is permitted.

(J. B. PARDIWALA, J)

(NISHA M. THAKORE,J)

Y.N. VYAS