

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF JUNE 2022

BEFORE

THE HON'BLE MR. JUSTICE M.I.ARUN

WRIT PETITION No.49458 OF 2018 (T-IT)

BETWEEN:

INFINEON TECHNOLOGIES AG
AM CAMPEON, 1-15, 85579 NEUBIBERG
GERMANY, REP. BY ITS AUTHORIZED
SIGNATORY, MR.ASHOK RAO
AGED 48 YEARS
R/O FLAT NO.DG1, GR GRAND
RESIDENCY, JP NAGAR, 6TH PHASE
KANAKAPURA ROAD
BANGALORE - 560 078

... PETITIONER

(BY SRI.T. SURYANARAYANA, SENIOR ADV. FOR
SMT. TANMAYEE RAJKUMAR, ADV.)

AND:

1. DEPUTY COMMISSIONER OF INCOME-TAX
(INTERNATIONAL TAXATION), CIRCLE-2(1)
ROOM NO.440, 4TH FLOOR, BMTC BUILDING
80 FEET ROAD, KORAMANGALA
BENGALURU - 560 095

2. COMMISSIONER OF INCOME-TAX
(INTERNATIONAL TAXATION)
BMTC BUILDING, KORAMANGALA
6TH BLOCK, BENGALURU - 560 085

... RESPONDENTS

(BY SRI.K. V. ARAVIND, ADV. FOR R1 & R2)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO DECLARE THAT THE IMPUGNED PROCEEDINGS INITIATED BY THE R-1 UNDER SECTION 147 R/W SECTION 148 OF THE ACT ARE BARRED BY LIMITATION AND OPPOSED TO THE SAID PROVISIONS AND THEREFORE WITHOUT JURISDICTION ETC.

THIS WRIT PETITION COMING ON FOR FURTHER HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The respondent authorities have sought to reopen the assessment of the petitioner for the year 2010-2011. Aggrieved by the same, the petitioner has preferred this writ petition on the ground that the proposed reopening of the assessment is time barred.

2. The respondents contend that the same is not time barred and it has been initiated in accordance with law and prays for dismissal of the writ petition.

3. Given the facts and circumstances of the case, as per the provisions of Section 149 of the Income Tax Act, 1961 as it stood then, the respondents were required to reopen the assessment by issuing a valid notice within a period of six years from the end of relevant assessment

year. The said proposition of law is not disputed by either of the parties.

4. In the instant case, the authorities have issued a notice dated 31.03.2017, which reads as under:-

"Whereas I have reason to believe that your income chargeable to tax for the assessment year 2015-16 has escaped assessment within the meaning of section 147 of the Income-tax Act.

I, therefore, propose to assess the income under section for the said assessment year and hereby required you to deliver to me a return in the prescribed form of your income for the said assessment year within 30 days from the date of service of this notice.

This notice is being issued after obtaining the necessary approval of the Commissioner of Income-tax (International Taxation), Bangalore."

5. Thereafter on 11.04.2017, the authorities have issued a corrigendum which reads as under:-

"This is with reference to the notice issued under section 148 of the Income Tax Act, 1961 dated 31.03.2017. It is to be informed that there has been a typographical error in the notice issued to you wherein the assessment year has

*been mentioned as 2015-16 instead of 2010-11. Hence, the Assessment Year 2015-16 as mentioned in Line – 2 of the said notice should be read as "**Assessment Year 2010-11**"."*

6. The case of the petitioner is that though the initial notice is dated 31.03.2017 it was in fact issued on 04.04.2017 and has produced a copy of the track consignment of the relevant post office, which shows that the notice in this case was booked on 04.04.2017 and was delivered on 12.04.2017. Given the period of limitation, the notice was required to be issued on or before 31.03.2017 and the notice issued on 04.04.2017 does not confer the jurisdiction upon the authorities as it becomes time barred.

7. The respondents have not been able to substantiate their contention that it was issued on 31.03.2017 and not on 04.04.2017.

8. Further, the notice states that the income that has escaped assessment within the meaning of Section 147 of the Income Tax Act, 1961 pertains to the assessment year 2015-2016.

9. By way of corrigendum dated 11.04.2017, the authorities have sought to correct the mistake in the original notice and have stated that the same has been issued for the assessment year 2010-2011 and not 2015-2016.

10. It is contended by the petitioner that the corrigendum dated 11.04.2017 has to be considered as a fresh notice and it cannot be a corrigendum to the earlier notice. What is sought to be corrected is not a mere procedural irregularity as contemplated under Section 292-B of the Income Tax Act, 1961 but a material mistake. On the said ground, it is contended that even presuming the date of issuance of first notice is dated 31.03.2017, issuance of the second notice in the style of corrigendum which is admittedly done on 11.04.2017 is time barred.

11. The first notice categorically states that the authorities intend to reopen the assessment to determine to escaped income for the assessment year 2015-2016. The authorities get the jurisdiction to reopen the assessment upon issuance of a notice as contemplated under Section

148 of the Income Tax Act, 1961 and by the first notice, the authorities have invoked their jurisdiction to reopen the assessment for the assessment year 2015-2016 and not 2010-2011. With regard to the assessment year 2010-2011, it can be said that the authorities have sought to invoke their jurisdiction by issuance of notice dated 11.04.2017 which is styled as corrigendum. By the said corrigendum, it cannot be said that it has sought to cure a procedural irregularity as contemplated under Section 292-B of the Income Tax Act, 1961 and it has to be held that they have invoked the jurisdiction to reopen the assessment for the year 2010-2011 only after issuance of the said corrigendum on 11.04.2017 which is clearly time barred.

12. Even otherwise as mentioned above, the petitioner has been able to demonstrate that though first notice is dated 31.03.2017, the same has been issued only on 04.04.2017, which is time barred.

13. For the said reasons, the writ petition succeeds.

Hence, the following:-

ORDER

- (i) The notice dated 31.03.2017 bearing F.No.148/DCIT-C-2(1)/Intl.Taxn./2016-17 vide Annexure - A to the writ petition passed by the respondent No.1 is hereby set aside.
- (ii) A corrigendum bearing F.No.148/DCIT-C-2(1)/Intl Taxn/2017-18 dated 11.04.2017 vide Annexure - C to the writ petition passed by the respondent No.1 is hereby set aside.
- (iii) Consequently, the order dated 29.08.2018 bearing F.No.DCIT-IT/C-2(1)/Infineon/10-11 vide Annexure - J to the writ petition wherein the objection of the petitioner has been over ruled by the respondent No.1 is also set aside.
- (iv) It is held that the proposed reopening of the assessment of the petitioner for the year 2010-2011 is time barred.

(v) The writ petition is **disposed of** accordingly.

**Sd/-
JUDGE**

MH/-