

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 01ST DAY OF AUGUST, 2018

BEFORE

THE HON'BLE MR.JUSTICE B. VEERAPPA

WRIT PETITION No.13313 OF 2017 (T-IT)

BETWEEN:

MPhasis Limited,
Rept by its Executive Vice President and
Chief Financial Officer,
Sri. Suryanarayanan Venkatasubramanian,
Aged about 58 years,
Bhagmane World Technology Centre,
Marathhalli Outer Ring Road,
Mahadevapura,
Bengaluru – 560 048.

...Petitioner

(By Sri. A. Shankar, Advocate)

AND:

1. The Deputy Commissioner of Income-Tax,
Circle-4(1)(2),
2nd Floor, BMTC Building, 80 feet Road,
Koramangala Vith Block,
Bengaluru – 560 095
2. The Pr. Commissioner of Income-Tax,
Bangalore -4,
BMTC Building, 80 feet Road,
Koramangala Vith Block,
Bengaluru – 560 095.

...Respondents

(By Sri. K.V.Aravind, Advocate)

This Writ Petition is filed under Articles 226 and 227 of the Constitution of India praying to direct the R1 to not to recover the disputed taxes mentioned in the order passed vide dated 26.12.2016 as referred in Annexure-G1 for the assessment year 2009-10 till disposal of the application pending before the Competent Authorities under mutual agreement procedure (MAP) and etc.

This Writ Petition coming on for *Orders*, this day, the Court made the following:

ORDER

The petitioner has filed the present Writ Petition for issue of a writ in the nature of mandamus to direct the respondent No.1 not to recover the disputed taxes mentioned in the order dated 26.12.2016 vide Annexure-G1 for the assessment year 2009-10 till disposal of the application pending before the competent authorities under Mutual Agreement Procedure; to direct the respondent No.1 not to recover the disputed taxes mentioned in the assessment order dated 26.12.2016 as per Annexure-G1 for the assessment year 2009-10 till disposal of appeals filed before the

Commissioner of Income Tax (Appeals); to direct the respondents not to take any coercive steps for recovery of disputed taxes and further, to direct the respondents not to withhold any refunds otherwise due to the petitioner for the impugned year or other years.

2. It is the case of the petitioner that the petitioner is engaged in the business of software development and maintenance services ("Information Technology/IT"), IT enabled services (ITeS) and Infrastructure Technology outsourcing ('ITO'). Accordingly he has filed return of income for the assessment year 2009-10 on 30.09.2009 declaring total income of ₹45,78,65,652/-. The return of income filed by the petitioner was selected for scrutiny and statutory notice under Section 143(2) were issued. The petitioner filed the details called for by the Assessing Officer from time to time. The petitioner filed objection to the draft

assessment order before the Dispute Resolution Panel and the DRP passed the order.

3. Subsequently, the Additional Commissioner of Income Tax passed the final assessment order on 31.03.2014 under Section 143(3) read with Section 144C(13) of the Act determining the total income of the petitioner at ₹524,81,23,820/-and total tax payable as per the assessment order at ₹191,88,91,064/-. Aggrieved by the said assessment order the petitioner has filed an appeal before the Tribunal and the same is pending. The petitioner also filed an application under Section 154 of the Act against the assessment order dated 31.03.2014. The Assessing Officer, by order dated 17.10.2014 determined the total income of the petitioner at Rs.302,91,01,348/- and total tax payable is at Rs.44,05,30,063/-.

The petitioner having apprehension that the respondent may take coercive steps to recover the disputed demand and tax, has filed the present writ petition before this Court for the relief sought for.

4. I have heard the learned counsel for the parties to the lis.

5. Sri A. Shankar, learned counsel for the petitioner contends that the recovery proceedings of income attributable to MAP are illegal and unsustainable in law and liable to be stayed. He further contended that without prejudice to his case disallowance of ₹578,20,05,614/- made under Section 40(a)(ia) of the Act requires to be granted deduction under Section 10A/10B and 10AA of the Act. It is further contended that payment made to Associate Enterprises are falling under Section 28 of the Act, consequent to the provisions of Section 40(a)(ia) of the Act is not applicable. The allowances of deductions

under Section 80JJAA of the Act has to be considered. He would further contend that if the impugned action of the respondent is not stayed, the very purpose for which the writ petition is filed will be frustrated. Therefore, he sought to allow the writ petition.

5. In support of the contentions, learned counsel relied on the Division Bench judgment of this Court in the case of **Commissioner of Income Tax and another vs. M/s M Pact Technology Services Pvt. Ltd.** made in **I.T.A.No.228/2013 dated 11.07.2018** wherein this Court has held that the disallowance under Section 40(a)(ia) of the Act is to be made of the expenses incurred and claimed by the assessee but before the payment of which, the assessee has failed to deduct tax at source. The genuineness of the expenditure is not in dispute. The dispute is whether Tax Deducted at Source was to be made before making the payment. Without going into the nature of the

transaction, ultimately held that if the deductions under Section 40(a)(ia) of the Act is not allowed, the same would be added to the profits of the undertaking on which the assessee would be entitled for deduction under Section 10A of the Act and therefore, he sought to allow the petition.

6. Per contra Sri.K.V.Aravind, learned counsel appearing for the respondent sought to justify the impugned action and contended that the petitioner has filed an application for stay during pendency of the appeal before the Commissioner of Income Tax (Appeals). The CBDT has issued instruction No.1914, dated 02.02.1993, Office Memorandum dated 29.02.2016. The first respondent disposed of the application by order dated 24.03.2017 and thereafter, the petitioner has preferred application before the second respondent and the second respondent considering the consent of the representative of the

petitioner directed payment of ₹65 crores against ₹93.28 crores being 15% of the total demand of ₹595.25 Crores, which works out to 10.90% of the total current demand for the assessment year 2009-10 and 2013-14. The requirement of payment of 15% as contemplated in Office Memorandum dated 29.02.2017 issued by CBDT has been modified to 20% vide Office Memorandum dated 31.07 2017. Hence, direction to pay 65% which would be 10.90% is in fact very reasonable and the petitioner cannot raise any grievance on the said order. He further contended that the Assessing Officer both in proceeding under Section 201 and Section 143 of the Act has elaborately dealt with the contentions of the assessee and it has been made out that the amount paid to the non resident companies who are taxable under the Act and assessee was required to deduct tax at source under Section 195 of the Act. Therefore, petitioner has not made out any prima-facie case to

interference by this Court under Articles 226 and 227 of the Constitution of India. He further contended that the stay of recovery of dues to the Government is not made out by the petitioner. Therefore, he sought for writ petition.

7. Sri. K.V.Aravind, learned counsel fairly submits that the Appellate Authority may be directed to dispose of the appeal within a period of eight weeks from the date of receipt of the copy of this order and till then the interim order granted by this Court shall continue and enure to the benefit of petitioner. The said submission is place on record.

8. In view of the rival contentions urged by the learned counsel for the parties, it is not in dispute that the 1st respondent Deputy Commissioner Income Tax by an order dated 06.02.2017 the exercising powers under Section 143(3) read with Section 144(c) of the Act has

determined the total income of the petitioner at ₹524,81,23,820/- and total tax payable by the petitioner was at ₹191,88,91,064/-. It is also not in dispute that the petitioner being aggrieved by the said assessment order, filed an appeal before the Commissioner for Income Tax(Appeals). The said appeal is pending before the Appellate Authority. That does not mean that the petitioner cannot escape from the tax payable as per the orders passed by the Deputy Commissioner Income Tax dated 08.03.2017 exercising powers under section 154 of Income Tax Act.

9. Therefore, without advertng to merits and demerits of the arguments urged by the learned counsel for the parties, it is suffice to direct the Appellate Authority, i.e., Commissioner of Income Tax (Appeals) to decide the appeal on merits as expeditious as possible, not later than 10 weeks from the date of receipt of certified copy of this order.

10. For the reasons stated above the writ petition is **dispose of**. The Commissioner of Income Tax appeals is directed to dispose of the appeal pending before him on merits within ten weeks from the date of receipt of certified copy of this Order. Till such consideration of the appeal, the interim order granted by this Court shall enure to the benefit of the petitioner and the Commissioner shall decide the appeal without seeking further time. All the contentions of both the parties are left open to be urged before the Appellate Authority.

**Sd/-
JUDGE**

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