
(2012) 01 MAD CK 0250

In the Madras High Court

Case No : Writ Petition No. 19652 of 2011 and M.P. No. 1 of 2011

M/s. HEF India Pvt. Limited

APPELLANT

Vs

The Dispute Resolution Panel

RESPONDENT

Date of Decision : 24-01-2012

Acts Referred:

Income Tax Act, 1961 — Section 144, 144(5), 147
Income Tax Rules, 1962 — Rule 10B

Citation : (2012) 01 MAD CK 0250

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : Anita Sumanth, for the Appellant; J. Narayanasamy, for the Respondent

Judgement

Honourable Mr. Justice M. Jaichandren

1. The writ petition, in W.P. No. 19652 of 2011, has been filed by the petitioner, which is a company engaged in the business of manufacturing speciality chemicals and surface treatments, challenging the order of the first respondent, dated 20.7.2011, made in respect of the assessment year 2005-2006. The petitioner has challenged the directions of the Dispute Resolution Panel, Chennai, the first respondent herein, dated 20.7.2011, issued u/s 144(c)(5) of the Income Tax Act, 1961, confirming the draft assessment order, received by the assessee, on 3.3.2011. The impugned proceedings of the first respondent had been challenged by the petitioner on various grounds, as stated in the affidavit filed in support of the writ petition. It had been submitted, inter alia, that the first respondent had erred in rejecting the submissions of the petitioner relating to the aspect of jurisdiction. It had also been submitted that the first respondent ought to have noticed that the order of the second respondent, dated 30.12.2010, was a regular assessment. Therefore, the re-opening of the assessment, u/s 147 of the Income Tax Act, 1961, was not in order. The corrigendum issued, on 22.2.2011, and the passing of the final assessment

order, dated 28.2.2011, received by the petitioner, on 3.3.2011, had denied the options available to the petitioner, u/s 144(c) of the Income Tax Act, 1961.

2. The first respondent had erred in not accepting the submissions of the petitioner, in respect to of the adjustment of Rs.7,76,53,749. The first respondent ought to have noted that TNMM, the method adopted by the petitioner for determining the ALP, was the most appropriate method in the circumstances of the case. The adoption of the CUP method by the third respondent is erroneous.

3. It had also been stated that the first respondent had erred in stating that certain additional details, which had not been furnished before the third respondent, had been filed before it. In fact no new materials had been furnished before the first respondent. The petitioner had also stated that the CUP method adopted by the first respondent, for determining the ALP, is erroneous, as it is contrary to Rule 10B of the Income Tax Rules.

4. In the writ petition, in W.P.No.21557 of 2011, the petitioner has stated that the order of the second respondent therein, dated 26.8.2011, relating to the assessment year 2005-2006, is erroneous and contrary to law. It has been stated that the impugned order passed by the assessing authority, pursuant to the proceedings of the Dispute Resolution Panel, which has been challenged by the petitioner, in W.P.No.19652 of 2011, is patently illegal.

5. It had been further stated that the second respondent ought not to have passed the impugned order, dated 26.8.2011, being aware of the pendency of the writ petition, in W.P.No.19652 of 2011. Since, the proceedings of the Dispute Resolution Panel, the first respondent in the writ petition, is erroneous and illegal, the consequential order of the second respondent, dated 26.8.2011, is also illegal and invalid in the eye of law.

6. At this stage of the hearing of the above writ petitions, the learned counsel appearing on behalf of the petitioner had submitted that it would suffice if the impugned orders of the first and the second respondents are set aside and if the matter is remitted back to the Transfer Pricing Officer-V, Chennai, the third respondent, in the above writ petitions, for passing an appropriate an order, after giving an opportunity of hearing to the petitioner.

7. Paragraph-10 of the counter affidavit, dated 23.1.2012, filed by the second respondent reads as follows: I state that the averment and the prayer of the petitioner in PARA 9 to quash the order is not tenable in view of the factual position enumerated as above. Notwithstanding the averments made above and without prejudice to our stand taken above, since the confusion seems to have arisen because of the wrong annexure enclosed with the TP order, if the Hon"ble High Court deems it fit, a fresh order explaining the reasons for the method selected, methodology adopted and the computation of adjustment can be passed by the TPO, after giving an opportunity of hearing to the appellant.

In view of the above, without going into the details of the rival contentions of the parties concerned, the impugned orders of the first respondent, dated 20.7.2011, and of the second respondent, dated 26.8.2011, relating to the assessment year 2005-06, are set aside and the matter is remitted back to the Transfer Pricing Officer-V, the third respondent in the above writ petitions, for passing appropriate orders, in accordance with law, after giving an opportunity of hearing to the petitioner. The writ petitions are ordered accordingly. No costs. Consequently, connected miscellaneous petitions are closed.