



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF JULY, 2023

BEFORE

THE HON'BLE MR JUSTICE S SUNIL DUTT YADAV

WRIT PETITION NO. 14541 OF 2023 (T-IT)

BETWEEN:

1. OPEN SILICON RESEARCH PRIVATE LIMITED
A COMPANY HAVING ITS REGISTERED
COMPANIES ACT OFFICE AT
NO.11/1 AND 12/1,
MARUTI INFOTECH CENTRE
B-BLOCK, 2ND FLOOR
KORAMANGALA INDIRANAGAR
INTERMEDIATE RING ROAD
BENGALURU - 560 071
REPRESENTED HEREIN BY ITS DIRECTOR,
SHRI KUTHETHUR SANDEEP SHETTY

... PETITIONER

(BY SRI. BHARADWAJ SHESHADRI, ADVOCATE A/W
SRI SANDEEP HUILGOL., ADVOCATE)



AND:

1. THE ASSESSMENT UNIT,
NATIONAL FACELESS ASSESSMENT CENTRE,
INCOME-TAX DEPARTMENT
2ND FLOOR, JAWAHARLAL NEHRU STADIUM,
NEW DELHI - 110 003
2. THE DEPUTY COMMISSIONER OF INCOME-TAX,
CIRCLE 3(1)(1), BANGALORE
2ND FLOOR, BMTc BUILDING,
80 FEET ROAD, 6TH BLOCK,



KORAMANGALA,
BENGALURU - 560 095

3. THE DISPUTE RESOLUTION PANEL - 2
BANGALORE
'A' WING, 4TH FLOOR, KENDRIYA SADAN,
2ND BLOCK, KORAMANGALA
BENGALURU - 560 034
REPRESENTED HEREIN BY ITS SECRETARY

... RESPONDENTS

(BY SRI. M. DILIP., ADVOCATE)

THIS W.P. IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASHING THE IMPUGNED ASSESSMENT ORDER DTD 26.10.2022 BEARING DIN ITBA/AST/S/143(3)/2022-23/1046470176(1) PASSED BY THE R-1 (ANNEXURE-A1) AND ETC.

THIS W.P. COMING ON FOR PRELIMINARY HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Petitioner has sought for quashing of the assessment order dated 26.10.2022 at Annexure-A1; computation sheet at Annexure-A2; demand notice at Annexure-A3 and the correspondence dated 30.06.2023 issued by respondent No.3 at Annexure-A4. Petitioner has also sought for an allied prayer which is consequential in nature to direct the 1st respondent to pass an order taking



note of the procedure under Section 144C of the Income Tax Act, 1961 (for short 'the Act').

2. Petitioner submits that he is an eligible assessee in terms of Section 144C (15)(b)(i) and that in response to the draft order, objections were filed in terms of Section 144C (2)(b) before the Dispute Resolution Panel (fort short 'DRP'), as is evident from Annexure-H. Annexure-H is the acknowledgment for having filed objections to the draft assessment order before the DRP. It is admitted however that copy of the said objections were not filed before the Assessing Officer in terms of Section 144C(2)(b)(ii) of the Act, which was however is a bonafide lapse on the part of the assessee. Petitioner submits that in the meanwhile, the Assessing Officer has proceeded to pass an assessment order which has been assailed and copy of which is produced at Annexure-A1. The said order, it is stated was passed on 26.10.2022.

3. It is submitted that subsequently, the DRP has issued directions to the Assessing Officer as per Annexure-



N on 15.05.2023. It is submitted that though directions were issued by the DRP at a subsequent point of time, in light of the obligation under Section 144C (13), the assessment order will have to be set aside and directions be taken note of and order be passed in terms of the procedure under Section 144C (13) of the Act. It is further submitted that in terms of Annexure-A4, the DRP has declared that the directions made by it to the Assessing Officer have become infructuous and non-est is required to be set aside. The observations at paragraph No.3.0 at Annexure- A4 is extracted as follows:

"In view of the above, the Panel opines that the DRP, according to Section 144C, has jurisdiction only over the Draft Assessment Orders and not over Final Assessment Orders. In the present case as the Final Assessment order predates the DRP directions, the said DRP directions become infructuous and non-est."

4. It is submitted that the assessment order will have to be set aside in light of the directions issued by the DRP at Annexure-N and the matter will have to be proceeded afresh in terms of Section 144C (13) of the Act.



5. Sri. M. Dilip, learned counsel appearing for the revenue on the other hand would point out that under Section 144C (2)(b)(ii), there is an obligation on the assessee to keep the assessing officer informed regarding filing of objections before the DRP and if such procedure is not adhered to strictly, no fault can be found as regards the assessing officer having proceeded to finalise the proceedings and passing the assessment order on the basis of draft order while construing as if no objections were filed. It is also submitted that the communication at Annexure-A4 ought not to be interfered with, as the directions were issued after the assessment order and the stand taken by the DRP is correct in law.

6. Heard both sides.

7. It is not in dispute that the petitioner is an eligible assessee in terms of Section 144C (15)(b)(i) of the Act. It is also not in dispute that the draft order was issued and communicated to the petitioner. It is also not in



dispute that the petitioner has filed its objections before the DRP as is evident from the Acknowledgment at Annexure-H which is within the time stipulated, which is also not controverted.

8. No doubt, there has been lapse in not filing the objections under Section 144C (2)(b)(ii) of the Act before the assessing officer. It is clear from the facts that the DRP has issued directions as per Annexure-N. Though the said direction is dated 15.05.2023 after passing of the assessment order on 26.10.2022, question as to whether non-filing of objections before the assessing officer will have the effect of assessing officer being empowered to go ahead and conclude the proceedings when in fact the petitioner had filed objections before the DRP and had not intimated the same to the assessing officer, requires consideration.

9. The scheme at Section 144C is clear and would envisage the procedure as follows:



- (a) On receipt of the draft order, the assessee within thirty days may file his acceptance of the variations to the Assessing Officer; or
- (b) In the event he disagrees with such variations, he has to file his objections to such variations with the Dispute Resolution Panel and the Assessing Officer.

10. Once such objections have been filed, the DRP in terms of Section 144C (5) may issue directions for guidance of the assessing officer to enable him to complete the assessment. The power of the DRP is provided for under Sections 144C (6) to 144C (10) of the Act. After the DRP exercises power vested under Section 144C as noticed above and directions are issued, the assessing officer has no discretion except to act in conformity with the directions.

11. It is not in dispute that if no directions are issued, the assessing officer need not wait under Section 144C (13). However, the fact remains that once objections are filed before the DRP and till directions are issued, the assessing officer cannot proceed further. This is in light of



mandate under Section 144C (13). Accordingly, non-intimation to the assessing officer under Section 144C (2)(b)(ii) though is a lapse on the part of the petitioner, the only way of meaningfully and harmoniously interpreting the obligation of filing objections under Section 144C (2)(b)(ii) is to construe the procedure that once such objections are filed before the DRP and till the decision is taken by the DRP regarding directions to be passed, the assessing officer ought not to proceed further. This is the procedure to be followed. In the present case where objections no doubt have been filed before the DRP and directions passed though at a later point of time, in light of the manner of construing the procedure the assessing officer ought not to have proceeded and ought to have waited till directions were passed by the DRP, as the directions have though been subsequently passed on 15.05.2023. Accordingly, the assessment order is required to be set aside. In light of the above, the assessment order at Annexure-A1 is set aside.



Consequently, the computation sheet at Annexure-A2 and the demand notice at Annexure-A3 are set aside.

12. Insofar as the communication at Annexure-A4 is concerned, once the DRP issues directions, it is not concerned with the action of the Assessing Officer. The passing of directions by the DRP confirms right on the petitioner to have such directions adhered to and even otherwise, in terms of Section 144C(13), the assessing officer has no discretion. If that were to be so, the question of the DRP withdrawing its directions does not arise and accordingly, the communication at Annexure-A4 is set aside in terms of the above discussion.

13. In light of the above, petition is ***disposed off***. The matter is restored to the stage of 144C(13) and the assessing officer shall proceed further in terms of the procedure under Section 144C(13) and the time contemplated under Section 144C(13) is deemed to commence from the date of receipt of certified copy of this order by the assessing officer. The assessing officer is to



follow the directions issued by the DRP at Annexure-N. It is clarified that the observations made above are made in the context of directions being issued by the DRP at a subsequent point of time and will not have the effect of construing the duty to file objections before the assessing officer under Section 144C(2)(b)(ii) as being optional and not mandatory.

Sd/-
JUDGE

VP