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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 15th December, 2021

+ **W.P.(C) 11609/2021 & CM Nos.35897-98/2021**

FIBERHOME INDIA PRIVATE LIMITED Petitioner

Through Mr. Salil Kapoor, Mr. Sumit
Lalchandani, Ms. Ananya
Kapoor, Ms. Soumya Singh,
Mr. Sanat Kapoor, Advs.

versus

NATIONAL E-ASSESSMENT CENTRE,
ADDITIONAL – JOINT – DEPUTY – ASSISTANT
COMMISSIONER OF INCOME TAX – INCOME-TAX
OFFICER Respondent

Through Mr. Sanjay Kumar, Sr. SC,
Ms.Easha Kadiyan, Adv.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

1. This petition has been filed by the petitioner challenging the Final Assessment Order dated 30.06.2021 passed by the respondent under Section 143(3) read with Section(s) 144C(3) and 144B of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') for the Assessment Year 2017-18.

2. The learned counsel for the petitioner submits that the petitioner had filed its return of income for the concerned Assessment Year on 29.11.2017. The case of the petitioner was selected for scrutiny

(Computer Aided Scrutiny Selection) and accordingly, notice under Section 143(2) of the Act was issued to the petitioner on 27.08.2018. Subsequently, the case of the petitioner was referred to the Transfer Pricing Officer under Section 92CA(3) of the Act for determination of the 'arm's length price' for the 'international transaction'. The Transfer Pricing Officer, New Delhi, vide order dated 22.01.2021, made an adjustment of ₹20,22,92,961/- (Rupees twenty crore twenty-two lakh ninety-two thousand nine hundred sixty-one) on account of transfer pricing adjustment for international transactions *qua* the issues of import of goods and interests on External Commercial Borrowings ('ECBs'). Based thereon, the respondent issued a Draft Assessment Order dated 21.04.2021 under Section 144C of the Act. Though Section 144C(2) of the Act allows thirty-days period to the eligible-assessee to file the objections against the Draft Assessment Order with the Dispute Resolution Panel (hereinafter referred to as the 'DRP'), the Central Board of Direct Taxes (hereinafter referred to as the 'CBDT'), vide Circular No. 08 of 2021 dated 30.04.2021, had extended the time limit for filing of such objections up till 31.05.2021. The petitioner accordingly, filed its objections before the learned DRP on 27.05.2021.

3. The learned counsel for the petitioner submits that as the objections against the Draft Assessment Order had been filed within the time permitted, the Assessing Officer could not have passed the Impugned Final Assessment Order without awaiting the directions of the DRP on such objections. He further places reliance on the Orders passed by the Supreme Court in *Suo Motu* Writ Petition (Civil) No. 03

of 2020, *In Re: Cognizance for Extension of Limitation* and CBDT Circular No. 10 of 2021 dated 25.05.2021 to contend that the period of limitation for filing of the objections stood extended and therefore, the objections having been filed within the time permitted, the Impugned Final Assessment Order is without jurisdiction. The learned counsel for the petitioner, in support of his submissions, places reliance on the following judgments:

- i. Judgment dated 14.07.2021 of this Court, passed in W.P.(C) 6484 of 2021, titled *SRF Ltd. v. National Faceless Assessment Centre, Delhi & Anr.*;
- ii. Judgment dated 06.08.2021 of this Court, passed in W.P.(C) 7936 of 2021, titled *Anand NVH Products Pvt. Ltd. v. National E-Assessment Centre Delhi & Anr.*; and
- iii. Judgment dated 01.10.2021 of the Calcutta High Court, in W.P.A. 13778 of 2021, titled *Lexmark International (India) Pvt. Ltd. v. Union of India & Ors.*

4. On the other hand, the learned counsel for the respondent submits that as the petitioner had failed to intimate the Assessing Officer about the filing of his objections before the DRP, the Assessing Officer was within its right to complete the assessment on the basis of the Draft Assessment Order and therefore, no fault can be found in the Impugned Final Assessment Order.

5. Today, the learned counsel for the petitioner has submitted that the DRP has, in fact, finally heard the objections on merit on 30.11.2021. In support, he has produced before us an e-mail dated 30.11.2021 from the DCIT, Secretary (DRP-1). He also places

reliance on the judgment dated 27.10.2021 of the High Court of Bombay, passed in Writ Petition (L) 15811 of 2021, titled *Sulzer Pumps India Private Limited v. Dy. Commissioner of Income Tax Circle-15(3)(2) & Ors.*, to contend that in similar circumstances, the High Court of Bombay was pleased to set aside the Assessment Order and directed the Assessing Officer to take steps in the matter after the DRP passes its order on the reference filed by the petitioner therein.

6. We have considered the submissions made by the learned counsels for the parties.

7. In view of the CBDT Circular dated 30.04.2021, the objections filed by the petitioner before the DRP were clearly within the time. The same has now been heard on merit by the DRP. Therefore, keeping in view of the scheme of Section 144C of the Act and the above-referred judgments of this Court as also of the Calcutta High Court and the Bombay High Court, we set aside the Impugned Final Assessment Order dated 30.06.2021, directing the respondent to act in accordance with the procedure stipulated in Section 144C of the Act.

8. Accordingly, the writ petition along with pending applications stand disposed of. There shall be no order as to costs.

NAVIN CHAWLA, J

MANMOHAN, J

DECEMBER 15, 2021/Arya/P