IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF AUGUST, 2024

PRESENT

THE HON'BLE MR JUSTICE S.G.PANDIT

AND

THE HON'BLE MR JUSTICE C.M. POONACHA

INCOME TAX APPEAL NO. 527 OF 2022

C/W

INCOME TAX APPEAL NO. 528 OF 2022

IN ITA No.527/2022

BETWEEN:

1. PR COMMISSIONER OF INCOME TAX
   BMTC COMPLEX
   KORAMANGALA
   BANGALORE

2. DEPUTY COMMISSIONER OF INCOME TAX
   RANGE-7(1)(1)
   BANGALORE.

...APPELLANTS

(BY SRI. SANMATHI E I.,ADVOCATE)

Digitally signed by BHARATHI S
Location: HIGH COURT OF KARNATAKA

AND:

M/S TATA POWER SOLAR SYSTEMS LIMITED
PLOT NO.78, ELECTRONIC CITY
HOSUR ROAD, BANGALORE
PAN NO.AAACT4660J

...RESPONDENT

(BY SRI. DHARPAN KIRPALAN, ADVOCATE FOR
SRI. BALARAM R RAO, ADVOCATE)

THIS ITA / INCOME TAX APPEAL IS FILED UNDER SEC.260-A OF INCOME TAX ACT 1961, PRAYING TO DECIDE THE FOREGOING QUESTION OF LAW AND/OR SUCH OTHER QUESTIONS OF LAW AS

MAY BE FORMULATED BY THE HONBLE COURT AS DEEMED FIT, SET ASIDE THE APPELLATE ORDER DATED 30.03.2022 PASSED BY THE INCOME TAX APPELLATE TRIBUNAL, BENCH B, BANGALORE, IN APPEAL PROCEEDINGS IT(TP)A NO. 699/BANG/2016 (ANNEXURE A) FOR ASSESSMENT YEAR 2011-2012, AS SOUGHT FOR IN THIS APPEAL AND TO GRANT SUCH OTHER RELIEF AS DEEMED FIT, IN THE INTEREST OF JUSTICE.

IN ITA No.528/2022

BETWEEN:

1. PR. COMMISSIONER OF INCOME TAX
   BMTC COMPLEX
   KORAMANGALA
   BANGALORE

2. DEPUTY COMMISSIONER OF INCOME TAX
   RANGE 7(1) (1),
   BANGALORE

…APPELLANTS

(BY SRI. SANMATHI E I.,ADVOCATE)

AND:

M/S TATA POWER SOLAR SYSTEMS LIMITED
PLOT NO. 78
ELECTRONIC CITY, HOSUR ROAD
BANGALORE
PAN NO AAACT4660J

…RESPONDENT

(BY SRI. DHARPAN KIRPALAN.,ADVOCATE FOR
SRI. BALARAM R RAO, ADVOCATE)

THIS ITA / INCOME TAX APPEAL IS FILED UNDER SEC.260-A OF INCOME TAX ACT 1961, PRAYING TO DECIDE THE FOREGOING QUESTION OF LAW AND/OR SUCH OTHER QUESTIONS OF LAW AS MAY BE FORMULATED BY THE HONBLE COURT AS DEEMED FIT, SET ASIDE THE APPELLATE ORDER DATED 30.03.2022 PASSED BY THE INCOME TAX APPELLATE TRIBUNAL, BENCH B, BANGALORE, IN APPEAL PROCEEDINGS IT(TP)A NO. 548/BANG/2016 (ANNEXURE A) FOR ASSESSMENT YEAR 2011-2012, AS SOUGHT FOR IN THIS APPEAL AND TO GRANT SUCH OTHER RELIEF AS DEEMED FIT, IN THE INTEREST OF JUSTICE.

THESE APPEALS, COMING ON FOR ADMISSION, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE S.G.PANDIT
and
HON'BLE MR JUSTICE C.M. POONACHA

ORAL JUDGMENT

(PER: HON'BLE MR JUSTICE C.M. POONACHA)

The present appeals are filed by the revenue under Section 260-A of the Income Tax Act, 1961[1] challenging the order dated 30.03.2022 passed in IT(TP)A No.699/BANG/2016 and in IT(TP)A No.548/Bang/2016, respectively by the Income Tax Appellate Tribunal, Bangalore[2].

2. The relevant facts necessary for consideration of the present appeal are that the respondent/assessee is engaged in the business of manufacture and sale of solar cells, photovoltaic modules and systems. The assessee filed its return of income for the financial year 2010-11 relevant to Assessment Year[3] 2011-12 on 24.9.2011.

3. The Transfer Pricing Officer[4] passed an order under Section 92CA(3) of the Act on 30.01.2015, proposing an

[1] Hereinafter referred to as the 'Act'
[2] Hereinafter referred to as 'Tribunal'
[3] Hereinafter referred to as 'AY'
[4] Hereinafter referred to as 'TPO'

adjustment to international transactions entered by the assessee. On receipt of the order of the TPO, the Assessing Officer[5] passed a draft assessment order under Section 144-C(13) r/w Section 143(3) of the Act on 27.3.2015, wherein the transfer pricing adjustment was made, as also certain other additions on corporate tax issues were made.

4. Aggrieved by the draft assessment order, the assessee filed objections before the Dispute Resolution Panel[6]. In response to the objections, the DRP issued directions under Section 144C(5) of the Act on 30.12.2015, confirming the additions proposed in the draft assessment order. On receipt of the directions of the DRP, the AO passed final assessment order on 28.1.2016. Being aggrieved, the revenue preferred IT(TP)A No.548/Bang/2016 and the assessee preferred IT(TP)A No.699/Bang/2016 before the Tribunal.

5. In the said appeals, the assessee took a specific ground with regard to limitation wherein it was contended that the order in the proceedings under Section 92CA(3) has been passed after expiry of the limitation and hence, the same is erroneous and required to be quashed. The Tribunal while

[5] Hereinafter referred to as 'AO'
[6] Hereinafter referred to as 'DRP'

noticing the said contention noticed Section 92CA(3) of the Act and held that the TPO is required to make an order under the said Section at any time before 60 days prior to the date of expiry of limitation stipulated as per Section 153(1) of the Act. Hence, the Tribunal noticing Section 153(1) of the Act held that the order under Section 143(3) of the Act for the AY 2010-11 in respect of the assessee should have been passed on or before 31.3.2015. Calculating 60 days prior to the said date, the Tribunal held that the order under Section 92CA(3) ought to have been passed on or before 28.1.2015. However, the order having been passed on 30.1.2015 and the same having been passed beyond the time prescribed, allowed the appeal of the assessee and dismissed the appeal of the revenue. Being aggrieved, the present appeals are filed.

6. Sri E.I Sanmathi, learned counsel for the revenue contends that the finding of the Tribunal is erroneous and perverse and the said appeals are required to be admitted to consider the substantial questions of law framed in the memorandum of appeal.

7. Per contra, Sri Dharpan Kirpalan, learned counsel appearing for Sri Balram R.Rao, learned counsel for the

assessee contends that the finding of the Tribunal being a factual one and the Tribunal having relied on a judgment of a learned Single Judge of the Madras High Court in the case of ***M/s.Pfizer Healthcare India Private Ltd., v. Joint Commissioner of Income Tax***[7] which has been affirmed by a Division Bench of the Madras High Court in ***The Deputy Commissioner of Income Tax & Anr., v. Saint Gobain India Private Ltd.,***[8], seeks for dismissal of the appeals.

8. The submissions of both the learned counsels have been considered and the material on record has been perused.

9. The question that arose for adjudication before the Tribunal fell on a narrow compass, inasmuch as it was the contention of the assessee that the order passed under Section 92CA(3) of the Act was beyond the time prescribed under law and hence, was liable to be quashed. While considering the said contention the Tribunal referred to Section 92CA(3A) and noticed that the period of limitation was 60 days prior to the expiry of limitation as per Section 153(1) of the Act. Further, the Tribunal noticed the time limit as prescribed under Section 153(1) of the Act for passing an order under Section 143(3) of

[7] Order dated 7.9.2020 passed in WP No.32699/2019
[8] Judgment dated 31.3.2022 passed in WA No.1120/2021 & c/w matters.

the Act and held that the order under Section 143(3) of the Act for the AY 2011-12 should have been passed by 31.3.2015. Hence, the date on which the order under Section 92CA(3) of the Act was to be passed was on or before 28.1.2015. Hence, the order Section 92CA(3) of the Act having been passed on 30.1.2015, the Tribunal accepted the contention put forth by the assessee and passed the impugned order.

10. It is further forthcoming that before the Tribunal the contention of the revenue was that the delay was a curable defect and that although the order was passed on 28.1.2015, the same was dated as 30.1.2015. While noticing the said contention the Tribunal by relying on the judgment of the Madras High in the case of ***M/s.Pfizer Healthcare India Private Ltd.,***[7] and also by noticing that the contention put forth by the revenue that the order was passed on 28.1.2015, but dated 30.1.2015 is not an irregularity of procedure rejected the said contention.

11. It is relevant to note that the learned Single Judge of the Madras High Court in the case of ***M/s.Pfizer Healthcare India Private Ltd.,***[7] has held that the period of 60 days stipulated for passing an order of Transfer Pricing is

mandatory. The said judgment has been upheld by the Division Bench of the Madras High Court in the case of ***Saint Gobain India Private Ltd.,***[8] wherein it has been held that the time schedule is mandatory in nature. The relevant portion of the judgment in the case of ***Saint Gobain India Private Ltd.,***[8] is extracted herein below for ready reference:

> *"38. In case of assessments involving transfer pricing, fixing of time limits at various stages sets forth that the object of the provisions is to facilitate faster assessment involving such determination. In the present case, as rightly held by the learned Judge in paragraphs 22 to 29 of the order dated 07.09.2020, the order of the TPO or the failure to pass an order before 60 days will have an impact in the order to be passed by the Assessing Officer, for which an outer time limit has been prescribed under Sections 144C and 153 and is hence mandatory. What is also not to be forgotten, considering the scheme of the Act, the inter-relatability and inter-dependency of the provisions to conclude the assessment, is the consequence or the effect that follows, if an order is not passed in time. When an order is passed in time, the procedures under 144C and 92CA(4) are to be followed. When the determination is not in time, it cannot be relied upon by the assessing officer while concluding the assessment proceedings.*
>
> *39. Upon consideration of the judgments and the scheme of the Act, we are of the opinion that the word "may" used therein has to be construed as "shall" and the time period fixed therein has to be scrupulously followed. The word "may" is used there to imply that an order can be passed any day before 60 days and it is not that the order must be made on the day before the 60th day. The impact of the proviso to the sub-section clarifies the mandatory nature of the time schedule. The word "may" cannot be interpreted to say that the legislature never wanted the authority to pass an order within 60 days and it gave a discretion. Therefore, the learned Judge rightly*

> *held the orders impugned in the writ petitions as barred by limitation, as the Board, in the Central Action Plan, has specified 31.10.2019 as the date on which orders are to be passed by the TPO, reiterating the time limit to be mandatory."*
>
> *(emphasis supplied)*

12. It is clear from the aforementioned that the question that arose for consideration before the Tribunal was a factual one as to whether the order under Section 92CA(3) was passed beyond the prescribed time limit and the Tribunal having recorded a finding of fact that the order passed under Section 92CA(3) of the Act ought to have been passed on or before 28.1.2015 and the same having been passed on 30.1.2015, is barred by limitation, no substantial question of law arises for consideration in the present appeals and the said appeals are dismissed at the stage of admission itself as being devoid of merit.

Sd/-
(S.G.PANDIT)
JUDGE

Sd/-
(C.M. POONACHA)
JUDGE

ND
List No.: 1 Sl No.: 31