Uk Grid Solutions Limited vs Assistant Commissioner Of Income Tax ... on 7 February, 2025

Author: Yashwant Varma

Bench: Yashwant Varma

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) 5095/2022
UK GRID SOLUTIONS LIMITED .....Petit
Through: Mr. Ajay Vohra, Sr. Advocate
with Mr. Aditya Vohra and Mr
Shashvat Dhamija, Advs.

versus

ASSISTANT COMMISSIONER OF INCOME TAX
(INTERNATIONAL TAXATION) CIRCLE 3(1)(1)
& ANR. ...Responde
Through: Mr. Puneet Rai, SSC with Mr
Ashvini Kumar & Mr. Rishabh
Nangia, JSCs and Mr. Nikhil
Jain and Ms. Srishti Sharma
Advs.

28
+ W.P.(C) 14574/2022
UK GRID SOLUTIONS LIMITED .....
Through: Mr. Ajay Vohra, Sr. Adv
with Mr. Aditya Vohra a
Shashvat Dhamija, Advs.

versus

ASSISTANT COMMISSIONER OF INCOME TAX
& ORS. .....Respondents
Through: Mr. Puneet Rai, SSC with Mr
Ashvini Kumar & Mr. Rishabh
Nangia, JSCs and Mr. Nikhil
Jain and Ms. Srishti Sharma
Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR
ORDER

% 07.02.2025 This is a digitally signed order.

1. These two writ petitions assail the reassessment action which has been initiated by the respondents and pertains to Assessment Years1 2013-14 and 2014-15.

2. While insofar as W.P.(C) 5095/2022 is concerned, the proceedings were initiated in terms of the reassessment regime which prevailed prior to the promulgation of the Finance Act, 2021, in W.P.(C) 14574/2022, the respondents had followed the route as prescribed by Section 148A(b) of the Income Tax Act, 19612.

3. A perusal of the reasons for reassessment would establish beyond a measure of doubt that the same were prompted by the survey which was conducted in 2007 and 2019 on various constituents of the GE Group in India. We had, while dealing with an identical issue in Grid Solutions OY (Ltd.) v Assistant Commissioner of Income Tax International Taxation and Another3, held as follows:

> "17. Contrary to the above, it had been the consistent stand of the present writ petitioners that no PE had existed in the years in question. It is in the aforesaid light that we would have to evaluate and examine whether the findings as recorded in the course of the 2007 or 2019 survey could have been blindly applied and adopted, extrapolated and read as being an accurate recordal of facts as they obtained in the AYs in question. It was conceded before us by the respondents that the reasons as recorded in support of the formation of opinion that income had escaped assessment had not alluded to any facts specific to AYs' 2013-14 to 2017-18. Despite repeated queries Mr. Bhatia who represented the respondents failed to draw our attention to any facet or fact pertaining to the AYs' in question and which could have been read as demonstrative of an application of mind to the facts that prevailed or obtained in the years in question and thus justified a reassessment action being validly initiated. In fact, as we go through those reasons, it becomes more than apparent that the AO has merely proceeded to adopt and reiterate what was found in the course of the survey undertaken in 2007 and 2019 read alongside the judgment of this Court rendered in GE Energy. According to Mr. Bhatia, in light of AY Act 2025 SCC OnLine Del 183.
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> the judgment of this Court in GE Energy, the AO was justified in proceeding on the "assumption" that facts had remained unchanged and that the business model had remained unaltered. Learned counsel in this respect also sought to draw sustenance from the decision of the Supreme Court in Raymond Woollen Mills Ltd. v ITO4 and to the following passages as appearing therein:-

> "1. The challenge in this case is to the reopening of the assessment of Raymond Woollen Mills Ltd. We have been shown the recorded reasons for reopening under Section 147-A (sic Section 147). The case of the Revenue was that the assessee was charging to its profit and loss account fiscal duties paid during the year as well as labour charges, power, fuel, wages, chemicals, etc. However, while valuing its closing stock, the elements of fiscal duty and the other direct manufacturing costs were not included. This resulted in the undervaluation of inventories and an understatement of profits. This information was obtained by the Revenue in a subsequent year's assessment proceeding.
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> 2. Mr Vellapally, learned Senior Counsel appearing on behalf of the appellant, has argued that the Department has made a grievous error in coming to this conclusion.
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> 3. In this case, we do not have to give a final decision as to whether there is a suppression of material facts by the assessee or not. We have only to see whether there was prima facie some material on the basis of which the Department could reopen the case. The sufficiency or correctness of the material is not a thing to be considered at this stage. We are of the view that the Court cannot strike down the reopening of the case in the facts of this case. It will be open to the assessee to prove that the assumptions of facts made in the notice were erroneous. The assessee may also prove that no new facts came to the knowledge of the Income Tax Officer after completion of the assessment proceeding. We are not expressing any opinion on the merits of the case. The questions of fact and law are left open to be investigated and decided by the assessing authority. The appellant will be entitled to take all the points before the assessing authority. The appeals are dismissed. There will be no order as to costs."

18. Indisputably, there is no principle akin to that of res judicata which can be recognized to be applicable to taxing disputes. Though this principle is well settled, we deem it appropriate to 1997 SCC OnLine SC This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 11/02/2025 at 21:54:35 refer to the following enunciation of the well-settled legal position in National Petroleum Construction Co. v Dy. CIT5 where the Supreme Court had held as follows:-

> "37. The High Court rightly held that the question of whether the appellant had permanent establishment, could not possibly be undertaken in an enquiry for issuance of certificate under section 197 of the Income-tax Act, having regard to the time-frame permissible in law for deciding an application, more so, when regular assessment had been completed in respect of the immediate preceding year and the appellant found to be taxable under the Income-tax Act at 10 per cent. of the contractual receipts. The assessing authority found that the appellant had permanent establishment in India in the concerned assessment years. The appeal of the

> appellant is possibly pending disposal."
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> "38. As held by the High Court, it is well settled that the principle that res judicata is not applicable to Income-tax proceedings because assessment for each year is final only for that year and does not cover later years."
>
> "39. Whether the appellant had permanent establishment or not, during the assessment year in question, is a disputed factual issue, which has to be determined on the basis of the scope, extent, nature and duration of activities in India. Whether project activity in India continued for a period of more than nine months, for taxability in India in terms of the Agreement for Avoidance of Double Taxation, is a question of fact, that has to be determined separately for each assessment year. * (2010) 327 ITR 456 (SC)."

19. In order to appreciate what the Supreme Court held in National Petroleum, it would be apposite to notice the more elaborate discussion which appears in the judgment of this Court in National Petroleum Con. Co. v. Deputy CIT6, the relevant parts whereof are extracted hereunder:-

> "24. The respondents have granted the impugned certificate for deduction at 4 per cent. of the gross receipts. The assessment for the above noted contracts would be undertaken in the future, viz., the assessment years 2019-

20 and 2017-18 respectively. As of now, we are not concerned with a regular assessment proceeding but, with determination of rate of tax deduction. On perusal of (2022) 446 ITR 382 2019 SCC OnLine Del 12357 This is a digitally signed order.

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Corporation have been held to be taxable under the Income-tax Act. Section 44BB of the Act is applied, and 10 per cent. of the contractual receipts were considered as business profits. The rate of tax being 40 per cent., a certificate was, accordingly, issued at 4 per cent. For the other assessment years as well, assessment has been completed and appeal is pending before the appellate authorities. The petitioner, obviously, disputes the finding of the respondent as erroneous and misplaced, on the ground that for the assessment year 2015-16, the first appellate authority following the decision of this court in the petitioner's own case, has held that the petitioner has no permanent establishment in India. Be that as it may, for the assessment years 2016-17 and 2017-18, this question has been determined against the petitioner. It is well- settled proposition that in tax jurisprudence, the principle of res judicata is not applicable to income tax proceedings.

> "In matters of recurring annual tax a decision on appeal with regard to one year's assessment is said not to deal with eadem question as that which arises in respect of an This is a digitally signed order.
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> The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 11/02/2025 at 21:54:35 assessment for another year and consequently not to set up an estoppel". [Ref: New Jehangir Vakil Mills Co. Ltd v. CIT (1963) 49 ITR (SC) 137]. "It is well settled that in matters of taxation there is no question of res judicata because each year's assessment is final only for that year and does not govern later years, because it determines only the tax for a particular period". [Ref: Installment Supply P. Ltd. v. Union of India [1962] AIR 1962 SC 53 (Constitution Bench)].
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> 25. The petitioner has argued that the need for consistency and certainty requires that there must exist strong and compelling reasons for a departure from a settled position, which must be spelt out and they are conspicuously absent in the present case. Mr. Balbir Singh has strongly argued that the stand taken by the respondents in the previous year should have been followed and in this regard, he relies upon the decision of the Supreme Court in the case of Radhasoami Satsang v. CIT [1992] 193 ITR321 (SC). Besides, Mr. Singh, as quoted earlier has also led considerable emphasis on the decision of this court dated May 9, 2017, wherein this court directed the respondents to issue certificate under section 197 of the Act, accepting the alternative plea of the petitioner that the Oil and Natural Gas Corporation would deduct tax at 4 per cent. plus surcharge plus education cess on the revenues in respect of only the inside India activities of the petitioner.
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> 26. We are, however, not impressed with the aforesaid contention and do not find the judgment of the Supreme Court in Radhasoami Satsang (supra) to be applicable in the present case. In the said case, the issue arose whether the assessee is a charitable trust, and this position had not been contested by the Income-tax Department from the assessment year 1937- 38 to the assessment year 1963-64. In these circumstances, the court held as under (headnote of 193 ITR 321):

> "Where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year."

27. In the present case, there cannot be any dispute that existence of permanent establishment is required to be determined by law for each year separately on the basis of the scope, extent, nature and duration of activities in each This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 11/02/2025 at 21:54:35 year. In this regard, the contracts in question, i.e., R-series contracts dated February 7, 2018 and LEWPP series contracts dated September 30, 2016 would have to be taken into consideration. Concededly, this court in its decision dated May 9, 2017 did not have the occasion to consider the R-series contract dated February 7, 2018. The court only considered the contract dated September 30, 2016 as noted in para-1 of the said decision. There is thus, a distinguishing feature - the R-series contract has not been considered by this court in its order dated May 9, 2017. Moreover, in the instant case, the reasons record that the two contracts are indivisible, and the petitioner cannot divide the contractual receipts in two categories, viz., inside India and outside India services. The installation permanent establishment will come into existence, if "project or activity continues for a period of more than 9 months" under Indo-UAE Double Taxation Avoidance Agreement. This question of fact will have to be determined separately for each assessment year, and we are informed that for the assessment year 2016-17 and the assessment year 2017-18, the determination is presently against the petitioner. We cannot accept the petitioner's contention that the assessment proceedings for the assessment years 2007-08, 2008-09 and 2009-10 have already determined this question in favour of the petitioner and there is no change in any circumstances. This question would require to be determined and finding of the fact would have to be arrived at, by a careful consideration of terms of contract, determination whereof cannot be undertaken in the proceedings under section 197 of the Act."

20. The interplay between the principle of consistency and the facts of each year of assessment was lucidly explained by our Court in Galileo Nederland BV Vs. Assistant Director of Income Tax (International Taxation)7 as under:-

> "19. We are aware that each assessment year is separate and distinct and principle of res judicata does not apply to proceedings for subsequent or other years. However, the decision on an issue or question though not binding should be followed and not ignored unless there are good and sufficient reasons to take a different view. Thus, it was/is possible for the Assessing Officer to depart from the finding or a decision in one year as it is final and conclusive only in relation to a particular year for which it is made but as observed in Radhasoami Satsang v. CIT 2014 SCC OnLine Del 4282 This is a digitally signed order.

> The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 11/02/2025 at 21:54:35 (1992) 193 ITR 321 (SC), when a fundamental aspect pervading through different assessment years has been found as a fact in one way or the other, it would inappropriate to allow the position to be changed in a subsequent year particularly when the said finding has been accepted. The said principle is also based upon the rules of certainty and consistency that a decision taken after due application of mind should be followed consistently as this lead to certainty, unless there are valid and good reasons for deviating and not accepting the earlier decision."

21. The Court also takes note of the succinct enunciation of this legal principle in Dwarkadas Kesardeo Morarka v Commissioner of Income Tax, Central8 where the Supreme Court had held as under:-

> "7. The conclusion of the Tribunal was amply supported by evidence. It cannot be said that because in the previous years the shares were held to be stock-in-trade, they must be similarly treated for Assessment Year 1949-50. In the matter of assessment of income tax, each year's assessment is complete and the decision arrived at in a previous year on materials before the taxing authorities cannot be regarded as binding in the assessment for the subsequent years. The Tribunal is not shown to have omitted to consider the material facts. The decision of the Tribunal was on a question of fact and no question of law arose which could be directed to be referred under Section 66(2) of the Income Tax Act."

22. The position of a PE being a facts-specific issue and thus liable to be examined against the backdrop of what obtained in a particular tax period is one which is underscored even by the OECD Commentary on Article 5 and the relevant part whereof is reproduced hereunder:-

> "8. It is also important to note that the way in which business is carried on evolves over the years so that the facts and arrangements applicable at one point in time may no longer be relevant after a change in the way that the business activities are carried on in a given State. Clearly, whether or not a permanent establishment exists in a State during a given period must be determined on the basis of the circumstances applicable during that period and not those applicable during a past or future period, such as a period preceding the adoption of new arrangements that modified the way in which business is carried on."

1961 SCC OnLine CS 221 This is a digitally signed order.

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23. It is in the aforesaid backdrop that the observations of the Supreme Court in CIT v Gupta Abhushan (P) Ltd9 also assume significance and where it was unambiguously held that a survey report pertaining to a particular tax period cannot ipso facto be read or countenanced as being relevant and binding for independent assessment years as is evidenced from paragraph 6 of the report which is extracted hereinbelow:

> "6. The second part of the reasons recorded by the Assessing Officer indicate that during the survey, it was noticed that extensive renovation work in the business premises of the assessee had been undertaken and that the renovation in respect of the ground floor had been completed and that the renovation in respect of the first floor was going on. It is further noted that the assessee had not booked any expenses on account of renovation of the said business premises. On the basis of these facts, the Assessing Officer noted that he was satisfied that investments made in the renovation work had escaped assessment. Here too, we note that the survey was conducted on March 7, 2002, which falls in the year subsequent to the three years in question in these appeals. The fact that the renovation expenses had not been booked in that year, i.e., financial year ending on March 31, 2002, does not by itself indicate that the renovation work had been carried on in the earlier three years and, if so, the expenses in respect of the same had not been booked. The conclusion of the Assessing Officer, based on what was noticed in the course of the survey, cannot be extrapolated to other years. The purported belief of the Assessing Officer, on this aspect of the matter, was not a belief at all but was merely a suspicion.
>
> Such suspicion cannot take the place of a belief and that too a belief which is based on reasons."

24. While and as our Court explained in Galileo it may be permissible for an AO to take cognizance of a "fundamental aspect pervading through different assessment years has been found as a fact in one way or the other....", the said precept could have been legitimately invoked provided the AO were satisfied or had come to record its prima facie opinion that the facts which prevailed and obtained in AY 2013-14 upto AY 2017-18 were identical to those which had been found in the course of the two surveys which had been undertaken in 2007 and 2019. However, no such finding has either been returned nor conclusion recorded in the "reason to believe" drawn by the AO.

25. The reliance placed by Mr. Bhatia on Raymond Wollen Mills is equally misplaced since the phrase "assumptions of facts" is clearly being misconstrued and read out of context. Learned counsel sought to contend that the said decision is an authority for the proposition that an AO could reopen basis an "assumption" of facts that may have obtained in a particular AY remaining unchanged. The said contention ignores the basic facts on which that decision was founded, namely,

of the AO there having found that the assessee was charging to its profit and loss account fiscal duties "during the year" resulting in undervaluation of inventories and understatement of profits. The observation with respect to an assumption being reached is liable to be appreciated in the aforesaid light. The reassessment action is thus liable to be set aside on this short score alone."

4. Accordingly, and following the reasons assigned by us in Grid Solution, we find ourselves unable to sustain the impugned reassessment action.

5. The writ petitions are, consequently, allowed. The impugned notices under Section 148 dated 31 March 2021 and 30 June 2021 are hereby quashed and set aside.

YASHWANT VARMA, J.

HARISH VAIDYANATHAN SHANKAR, J.

FEBRUARY 07, 2025/akc This is a digitally signed order.