M/S Technip Singapore Pte Ltd Earlier ... vs Dy. Commisioner Of Income Tax ... on 30 September, 2020

Author: Manmohan

Bench: Manmohan, Sanjeev Narula

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P. (C) 4319/2020
M/S TECHNIP SINGAPORE PTE LTD
EARLIER KNOWN AS GLOBAL INDUSTRIES
ASIA PACIFIC PTE LTD. ..... Petitioner
Through: Mr. Salil Kapoor with Ms. Ananya
Kapoor, Advocates.
versus

DY. COMMISIONER OF INCOME TAX INTERNATIONAL
TAXATION RANGE 3(1)(1) & ORS. ..... Respondents
Through: Mr. Sunil Agarwal, Advocate.
CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MR. JUSTICE SANJEEV NARULA
ORDER

% 30.09.2020 The petition has been heard by way of video conferencing. Present writ petition has been filed seeking a direction to the respondents to process the petitioner's return of income and to refund the principal amount of Rs. 13,19,07,142/- along with applicable interest upto date.

On the last few dates of hearing, the respondents had taken time as they stated that the record in question was more than ten years old and the petitioner had undergone amalgamation and the jurisdiction of its Assessing Officer had changed.

The respondent has filed a status report dated 24 th September, 2020. The said report is reproduced hereinbelow:-

> "F. No. ACIT/Cir-3(1)(1)/Intl. Tax./2020-21/ Dated: 24.09.2020 Status Update in WP(C) No. 4319 of 2020 in the matter of Technip Singapore PTE Ltd. Vs. Deputy Commissioner of Income Tax Circle 3(1)(1)(IT), International Taxation, New Delhi (AYs. 2009-10, 2010-11 & 2011-12)
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> 1. The assessee has claimed a total refund of Rs.13,19,07,142/- (plus consequential interest) for the 03 Assessment Years in question (Reference Pg.14 of the Writ Petition). This refund, as per the assessee, originates from the assessee's cumulative TDS for the 03 years after adjusting its cumulative tax liability. It may be noted that

out of this refund amount, the assessee has attributed Rs.12,40,66,110/- to tax deducted by Indian Oil Corporation Limited (IOCL) in AY 2009-10 (Reference Pg.66 of the Writ Petition).

The remaining amount of refund i.e. Rs.78,41,032/- has been attributed by the assessee to cumulative tax deducted by Larsen & Tubro Ltd. at source in all 03 years i.e. AY 2009-10, 2010-11, and 2011-12.

2. In order to process the assessee's ITR, the department's processing software matches TDS claimed by the assessee in its ITR with the TDS available in the department's database (Form 26AS) which in turn depends on TDS Return filed by the deductors concerned.

3. For the portion of the claimed refund attributed to tax deducted by IOCL at source, i.e. Rs. 12,40,66,110/- (AY 2009-

10), it has been found that the deductor (IOCL) has filled the assessee's PAN in its TDS Return as "PANAPPLIED" instead of the assessee's actual PAN, owing to which the assessee's Form 26AS is not reflecting the amount of tax deducted by IOCL at source. For the department's processing software to take this TDS into account while processing the assessee's refund, it is necessary for the assessee's Form 26AS to reflect the tax deducted by IOCL. This can only materialize once the deductor (IOCL) revises its TDS Return for AY 2009-10 and fills the correct PAN of the assessee against the associated payments.

4. The remaining portion of the claimed refund i.e. Rs. 78,41,032/- arises from tax deducted by Larsen & Tubro Ltd. at source for all 03 years, after adjusting the tax liability associated with these transactions for all 03 years. In this regard, the following may be noted:

AY	TDS Claimed in ITR	TDS Reflecting in 26AS
2009-10	Rs.10,23,93,173	Rs.6,33,54,921
2010-11	Rs.6,50,45,062	Rs.73,07,766
2011-12	Rs.7,39,048	Rs, 37,20,957
Total	Rs.16,81,77,283	Rs.7,43,83,644

5. From the above table, it can be seen that the TDS claimed by the assessee with respect to Larsen & Tubro Ltd. is not matching with the TDS reflecting in its Form 26AS available with the department for all the 03 years in question. In this regard, while verification and reconciliation statement has been sought from the deductor (Larsen & Tubro Ltd.), the office of the undersigned has not received the same from the deductor till date. It appears, then, that the TDS Returns filed by the deductor (Larsen & Tubro Ltd.) for AY 2009-10, 2010-11, and 2011-12 possibly suffers from defects such as missing/incorrect PAN of the deductee, owing to which the TDS amounts claimed by the assessee are not reflecting in its Form 26AS. However, the office of the undersigned is unable to identify the said defects due to lack of response from the deductor (Larsen & Tubro Ltd.). Hence, in the absence of confirmation from the deductor, only the TDS reflecting in Form 26AS can be taken into account

while processing the ITR, after adjusting the associated tax liability.

6. The returns filed by the assessee for AY 2009-10, 2010-11 and 2011-12 pertain to very old years and the assessee was in litigation for the said years till 2016. Only after that has the assessee approached the department for processing of its ITRs and issuance of refund. In order to process ITRs pertaining to such old years, the existing SOP issued by CBDT requires the office of the undersigned to seek approval to do so from the Principal Chief Commissioner of Income Tax (International Taxation), New Delhi. Once the approval was obtained (dated 29.08.2019), the office of DG(Systems), Income Tax was intimated the same in order to enable the ITR processing functionality on the Department's software ITBA for the aforementioned 03 Assessment Years. The office of DG(Systems) in turn has processed the same and the functionality has been enabled.

7. In view of the above it is humbly submitted, once the deductors file the rectified TDS Returns, the department will be enabled to process the ITRs of the assessee and issue the resulting refund along with applicable interest expeditiously.

(Smriti Krishnia) Assistant Commissioner of Income Tax Circle-3(1)(1), (Intl. Tax), New Delhi"

> The petitioner has placed on record a letter dated 17 th August, 2020 written by the IOCL to the Assessing Officer. The said letter reads as under:
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> "To, The Deputy Commissioner of Income Tax Cir-3(1)(1), Intl. Taxation, New Delhi Room No. 416 (4th floor); E-2 Block Dr. S.P.Mukherjee Civic Centre, J.L.Nehru Marg New Delhi 110002 (kind Attn. Shri. Sukhad Chaturvedi) Sir, This is with reference to your letter ref DCIT/Circle- 3(1){1)/lntl.Tax/2020-21/842 dated 06.08.2020 regarding claiming of Rs.12,40,66,110/- as credit of TDS for A.Y/2009-10 by M/s Global Industries Asia Pacific Pte. Ltd. (PAN:AADCG3338D) We herebv confirm the details of tax deduction and deposit under IOCL TAN MHTI00139G against the related items as given hereunder:
>
> | Challan serial No. | Date of deposit | Amount | Financial year |
> |---|---|---|---|
> | 13088 | 30/03/2019 | 3,55,35,615 | 2008-09 |
> | 9048 | 30/03/2019 | 7,35,89,579 | 2008-09 |
> | 1138 | 21/08/2009 | 1,49,40,916 | 2009-10 |
> | | TOTAL | 12,40,66,110 | |
>
> The above amounts are also matched and reflecting in "Tax Information Network of Income Tax department", screenshot of which is enclosed herewith.
>
> Thanking You, Yours faithfully, For and on behalf of Indian Oil Corporation Ltd.
>
> (Pipelines Division) Sd/-

(S. Bhattacharyya) Chief Finance Manager"

From the aforesaid letter, it is apparent that the petitioner's PAN is known to at least one of the principal deductors, i.e., IOCL.

Mr. Sunil Agarwal, learned counsel for the respondents fairly states that the department wants to resolve this case as it is not in dispute that the TDS has actually been deducted by both the deductors, i.e. IOCL and Larsen & Tubro Ltd (L&T).

A Division Bench of this Court in Court on Its Own Motion Vs. Commissioner of Income-Tax, [2013] 352 ITR 273 (Delhi) in similar circumstance has held as under:-

> "48. The Finance Minister in his recent speech while inaugurating the new Central Processing Cell for Tax Deducted at Source at Aayakar Bhawan in Ghaziabad, U.P. had emphasised the need for 'technology driven tax administration' and had stated as under:
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> "This system will serve two people. As a deductee, I know how much the taxpayer suffers if the TDS is not credited to his or her account."

49. The statement reflects the true and correct position of a pique assessee as a deductee, who has suffered tax deduction at so urce, but is not given due credit in spite of the fact that the deductor has paid the said tax. The respondents have received their due or money but credit is not given to the person from whose income tax has been deducted. Denying benefit of TDS to a taxp ayer because of the fault of the deductor, which is not attributable to the deductee, causes unwarranted harassment and inconvenience. The deductee feels cheated. The Revenue cannot be a silence spectator, wash their hands and pretend helplessness. The problems highlighted here are normally faced by small or middle class taxpayers, including senior citizens as they do not have Chartered Accountants or Advocates on their pay rolls. The marginal amount involved in several cases and inconvenience/harassment in volved makes it unviable and futile exercise to first approach the deductor and then the Assessing Officer. Rectification and getting corrections made by the deductor and to get them uploaded is not an easy task. The second phase of filing a revised return or an application under Section 154 is equally daunting and "expensive". Invariably the assessees will write letters or even visit the office of the deductors, but when there is no response or desired result, they get frustrated and suffer. This causes distrust and feeling that the assessee has not been treated justly, fairly and in an honest manner. In our earlier orders, we had emphasised this aspect and asked the Board to take appropriate steps to ameliorate and help the small taxpayers.

50. It is unfortunate that the Board did not take immediate steps after even noticing lacuna and waited till Finance Act, 2012, when Section 234E was enacted. Mere writing of a letter by the Assessing Officer to the deductor by no stretch can be treated as sufficient action on the part of the respondents. Even this, it appears, was done in a few cases as the respondents in the counter affidavit have stated that they have written 20119 communications to the tax deductors, where TDS credit claimed by the taxpayers did not match with the details loaded by the deductors. The Act

empowers and authorises the Assessing Officer to verify the contents of the return and notices can be issued to a third party, i.e. the deductor, to furnish information and details. The deductor, the principal officer or person responsible for making deduction, once issued notice to appear, in most cases, would like to comply with the statutory requirements and also furnish details with regard to TDS deducted from the income of the assessee. The statutory powers given to the Assessing Officer are sufficient and should be resorted to and the assessee cannot be left to the mercy or the sweet will of the deductors. Therefore, we direct that when an assessee approaches the Assessing Officer with requisite d etails and particulars, the said Assessing Officer will verify whether or not the deductor has made payment of the TDS and if the payment has been made, credit of the same should be given to the assessee. These details or the TDS certificate should be starting point for the Assessing Officer to ascertain and verify the true and correct position. The Assessing Officer will be at liberty to get in touch with the TDS circle in case he requires clarification or confirmation. He is also at liberty to get in touch with deductor by issuing a notice and compelling him to upload the correct particulars/details. The said exercise must be and should be undertaken by the Revenue, i.e. the Assessing Officer as an assessee who suffers in such cases is not due to his fault and can justifiably feel deceived and defrauded. We do not accept the stand of the Revenue that they can only write a letter to the deductor to persuade him to correct the uploaded entries or to upload the details. Power and authority of the Assessing Officer, cannot match and are not a substitute to the beseeching or imploring of an assessee to the deductor. The directions given above, are in accord with the provisions of the Act, namely, Section 133 and TDS provisions of the Act. If required and necessary, the income tax authorities can obtain prior approval from the Director or the Commissioner. The authorities can also examine whether general approval can be given. The said exercise is undertaken by the Assessing Officer while verifying or examining the return. Section 234E will also require similar verification by the Assessing Officer. In such cases, if required, order under Section 154 of the Act may also be passed. Circular No. 4 of 2012 will be equally applicable. This is the seventh mandamus which we have issued.

(emphasis supplied) In view of the facts of the present case as well as the aforesaid judgment, this Court directs the Assessing Officer to take action in pursuance to paragraph 50 of the aforesaid judgment by writing letters as well as issuing directions to both IOCL and L&T to revise their TDS returns incorporating the PAN of the petitioner. Let the needful be done within three weeks.

List on 04 th November, 2020.

The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

MANMOHAN, J SANJEEV NARULA, J SEPTEMBER 30, 2020 AS