

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

+ W.P.(C) 689/2011

ERICSSON AB

..... Petitioner

Through Mr. S. Ganesh, Sr. Advocate with
Mr. Prakash Kumar and Mr. Ajay
Singh, Advocate.

versus

ADDITIONAL DIRECTOR OF INCOME TAX RANGE

1, INTERNATIONAL TAXATION NEW DELHI Respondent

Through Mr. Anupam Tripathi, Adv.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SANJIV KHANNA

ORDER

% **04.02.2011**

By this writ petition preferred under Article 226 of the Constitution of India, the petitioner has prayed for issue of a writ of certiorari for quashment of the draft assessment dated 31st December, 2010 passed under Section 144C(1) of the Income Tax Act, 1961 (for brevity, the Act) for assessment year 2007-08. Mr. S. Ganesh, learned senior counsel criticizing the said order has raised two-fold contentions:-

(a) The Assessing Officer while proceeding to frame the draft assessment order has not kept in view the proviso to sub section 3(d) of the Section 92C of the Act, which is mandatory in view of the decision rendered by this Court in *Moser Baer India Ltd. and Others Vs.*

Additional Commissioner of Income-Tax and Another [2009] 316 ITR 1 (Delhi).

(b) When the Transfer Pricing Officer had accepted the transfer pricing and had directed that no transfer pricing adjustment was required to be done, it was incumbent on the part of the Assessing Officer to follow the same in letter and spirit and that being binding on him as per the provision contained in Section 92CA(4) of the Act.

2. Mr. Anupam Tripathi, learned counsel appearing for the Revenue submitted that the petitioner can file objection before the Assessing Officer as well as the Dispute Resolution Panel raising the said issue as postulated under Section 144C (2) and (5) so that the said authority, namely, Dispute Resolution Panel can advert to the same in proper perspective. It is contended by him that a complete proposal has been prescribed by the legislature to deal with such a situation and, therefore, it would be advisable in the facts and circumstances that the assessee must take recourse to the said remedy in spite of assailing the same in a writ petition.

3. To appreciate the rivalised submissions at Bar, we have carefully perused the scheme enshrined under Section 92C, 92CA(4) and Section 144C of the Act in entirety. Section 144C (2) to (7) read as follows:-

- “(2) On receipt of the draft order, the eligible assessee shall, within thirty days of the receipt by him of the draft order,-
- (a) file his acceptance of the variations to the Assessing Officer; or
 - (b) file his objections, if any, to such variation with,-
 - (i) the Dispute Resolution Panel; and
 - (ii) the Assessing Officer.
- (3) The Assessing Officer shall complete the assessment on the basis of the draft order, if-
- (a) the assessee intimates to the Assessing Officer the acceptance of the variation; or
 - (b) no objections are received within the period specified in sub-section (2).
- (4) The Assessing Officer shall, notwithstanding anything contained in section 153, pass the assessment order under sub-section (3) within one month from the end of the month in which,-
- (a) the acceptance is received; or
 - (b) the period of filing of objections under sub-section (2) expires.
- (5) The Dispute Resolution Panel shall, in a case where any objection is received under sub-section(2), issue such directions, as it thinks fit, for the guidance of the Assessing Officer to enable him to complete the assessment.
- (6) The Dispute Resolution Panel shall issue the directions referred to in sub-section (5), after considering the following, namely:-
- (a) draft order;
 - (b) objections filed by the assessee;
 - (c) evidence furnished by the assessee;
 - (d) report, if any, of the Assessing Officer, Valuation Officer or Transfer Pricing Officer or any other authority;
 - (e) records relating to the draft order;
 - (f) evidence collected by, or caused to be collected by, it; and
 - (g) result of any enquiry made by, or caused to be made

by it;

(7) The Dispute Resolution Panel may, before issuing any directions referred to in sub-section (5),-

(a) make such further enquiry, as it thinks fit; or

(b) cause any further inquiry to be made by any income-tax authority and report the result of the same to it.”

4. On a perusal of the aforesaid provisions, we find the Dispute Resolution Panel on receipt of the objection has power to issue such directions as it thinks fit for the guidance of the Assessing Officer to enable him to complete the assessment. Sub-section 6 and 7 provide the guidelines and the manner in which the Dispute Resolution Panel shall carry the proceedings before it under the said provision.

5. We are of the considered opinion the said provisions cannot be treated as totally redundant or absolutely inefficacious remedy to the assessee. When a statute has provided a remedy as an intermediate stage, we are disposed to think, the assessee is under obligation to take recourse to the same.

6. In view of the aforesaid, we are inclined to grant liberty to the petitioner to file the objections within one week from today in accordance with the provisions contained in sub-section 2 of Section 144, thereafter the Dispute Resolution Panel shall proceed in accordance with the postulates laid down in sub-sections (5) to (7) of Section 144C of the Act.

The Dispute Resolution Panel shall afford adequate opportunity for personal hearing to the appellant and deal with the issues urged by a speaking order which would reflect cogent reasons. We may hasten to add, when an authority is created under a statute conferred with the powers, it has the obligation to act as a body living to the expectations which the law mandates. We have thought it apt to say so, so that no assessee can have any kind of apprehension that the approach to the Dispute Resolution Panel is a perfunctory.

7. With the aforesaid directions, the writ petition stands disposed of with no order as to costs.

Dasti under signature of the Court Master.

CHIEF JUSTICE

SANJIV KHANNA, J.

FEBRUARY 04, 2011
NA