HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD
(Special Original Jurisdiction)

TUESDAY, THE TWENTY THIRD DAY OF SEPTEMBER
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE THE CHIEF JUSTICE APARESH KUMAR SINGH
AND
THE HONOURABLE SRI JUSTICE G.M. MOHIUDDIN

WRIT PETITION NO: 37108 OF 2024

Between:

Open Text Corporation India Private Limited, (Erstwhile Cordys Software India Private Limited now merged with Open Text Corporation India Private Limited) Registered Office No. 120-125, Workafella, Ist Floor, Cyber Crown, Sector - II, HUDA Techno Enclave, Madhapur, Shaikpet, Telangana - 500081, India Through its Director- Mr. Amit Mangal S/o. Dinesh Chand Mangal, Aged about 46 years, R/o. Hyderabad (PAN- AAACB8264E, now merged into AABCO6299F)

...PETITIONER

AND

The Assistant Commissioner of Income Tax Circle - 5(1),, Room No. 224, B-Block, 2nd floor. IT tower, AC Guards, Masab Tank, Hyderabad, Telangana, 500004 email-hyderabad.dcit5. @incometax.gov.in

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a writ of certiorari or any other appropriate writ, order or direction for quashing the impugned order dated 26.09.2024 bearing DIN and ORDER No. ITBA/GEA/M/254/2024-25/1069147219(1) passed under section 254 read with 143(3) of the Income Tax Act, 1961 grant of consequential refund along with applicable interest under section 244, 244A(1) and 244A(1A) of the Act for assessment year 2005-06.

Counsel for the Petitioner : SRI VISHAL KALRA for SRI M.NAGA DEEPAK

Counsel for the Respondents: SRI K.SUDHAKAR REDDY (SrSC FOR INCOME TAX)

The Court made the following: ORDER

THE HON'BLE THE CHIEF JUSTICE SRI APARESH KUMAR SINGH

AND

THE HON'BLE SRI JUSTICE G.M.MOHIUDDIN

Writ Petition No.37108 of 2024

Order:

Heard Mr. Vishal Kalra, learned counsel appearing for Mr. M.Naga Deepak, learned counsel for the petitioner and Mr. K.Sudhakar Reddy, learned Senior Standing Counsel for Income Tax Department appearing for the respondent.

2. The present challenge is to the consequential order dated 26.09.2024, passed by the respondent- Assistant Commissioner of Income Tax, Circle-5(1), Hyderabad (for short 'the respondent-ACIT'), in respect of the assessment year 2005-06 upon remand by the Income Tax Appellate Tribunal, Bench 'A', Hyderabad (for short 'the ITAT'), in I.T.A.No.1451/Hyd/2010 dated 13.06.2014. Consequent to the relief allowed by the ITAT, the assessment order under Section 143(3) of the Income Tax Act, 1961 (for short 'the Act') dated 14.10.2008, was modified by treating the revised income of the petitioner as Rs.3,97,79,542/-, by deducting a sum of Rs.3,45,51,636/- towards the relief allowed by the ITAT of

Rs.7,43,31,178/-, as per rectification order dated 13.02.2012, under Section 154 r/w Section 143(3) of the Act. The respondent- ACIT has computed the total tax and interest refundable as Rs.4,09,49,631/-.

3. Petitioner is a company engaged in software development. It filed its return of income for the subject assessment year on 01.11.2025. The case of the petitioner was referred to a Transfer Pricing Officer (TPO) on 08.05.2006 for determining the Arm's Length Price (ALP) of the international transactions undertaken during the subject year. The TPO *vide* order dated 31.03.2008, passed under Section 92CA(3) of the Act, determined the ALP of the transactions pertaining to provisions of software services at Rs.44,11,05,783/- and consequently, computed the adjustment at Rs.7,07,47,467/- under Section 92CA of the Act. Consequent to the order of the TPO, the respondent-ACIT completed the assessment *vide* Order dated 14.10.2008 under Section 143(3) of the Act at a total income of Rs.7,20,86,690/- as against the returned income of Rs.9,61,490/-. The petitioner preferred an appeal before the

Commissioner of Income Tax (Appeals) (for short 'the CIT(A)'), which partly allowed the issue pertaining to transfer pricing adjustment and granted exemption under Section 10A of the Act as claimed by the petitioner in its return, *vide* order dated 21.09.2010. Consequent thereto, the Assessment Officer modified the order passed under Section 143(3) of the Act, giving effect to the order passed by the CIT(A) determining the total revised income of the petitioner at Rs.7,10,57,050/-, *vide* order dated 30.11.2010. Petitioner carried the matter in appeal before the ITAT in I.T.A.No.1451/Hyd/2010 challenging the transfer price adjustment upheld by the CIT(A) *vide* order dated 21.09.2010. In the meantime, petitioner deposited Rs.3,71,12,067/- *vide* challans at Ex.P.5. Further refund amount of Rs.58,49,229/- pertaining to other years was adjusted against demand raised by the respondent-ACIT on various dates as also specified in the order dated 30.11.2010. The learned ITAT *vide* its order dated 13.06.2014 partly allowed the appeal whereby the issue of transfer pricing adjustments was remitted back to the file of AO/TPO for fresh consideration.

4. The relevant portion of the order dated 13.06.2014, passed by the learned ITAT, is reproduced hereunder:

"17.1. With reference to quantification of risk adjustment, assessee arrived at the same at 4.63% based on difference in the average prime lending rate and the average bank rate. Even though, we cannot accept that the difference in prime lending rate and bank rate has to be considered as risk adjustment, we are, however of the opinion that TPO should examine the risk profile of the assessee and other comparables and arrive at appropriate risk adjustment if it can be quantified on any reasonable basis. He is also directed to see whether assessee has done any risk adjustments in its own T.P.study. Therefore, on negative working capital adjustment as well as risk adjustment, the issue is restored to the file of the TPO, as selection of comparables were also restored to the file of the TPO. TPO should examine these aspects and arrive at revised ALP, after giving due opportunity to the assessee. Ground No.11 is accordingly allowed for statistical purposes.

18. Ground No.12 does not require any adjudication in view of amendment to Section 92C with reference to variation of 5%. Therefore, the same is rejected.

19. Ground No.13 pertains to levy of interest under Section 234B on additional income arising due to T.P. adjustment. This issue is also required to be re-adjudicated by the TPO depending on the fact whether T.P. adjustments are required or not. A.O/TPO is directed to give an opportunity

to the assessee, takes its objections and then consider the issue factually and legally. With these directions, ground No.13 is considered as allowed for statistical purposes.

20. In the result, appeal of the assessee is allowed for statistical purposes."

5. Petitioner submitted letters before the AO/TPO on different dates starting from 06.06.2017 till 13.09.2024 to give effect to the directions of the learned ITAT and release the consequential refund. Petitioner contends that after lapse of ten long years, the respondent-ACIT passed the impugned order dated 26.09.2024, under Section 254 r/w Section 143(3) of the Act for the subject assessment year.

6. The impugned order dated 26.09.2024 has been assailed by the petitioner firstly on the ground that the assessing officer was under a duty to pass a draft assessment order in case there is transfer pricing variation.

7. As per Section 144C(2) of the Act, the assessee gets an opportunity to file his objections within 30 days of such variation before the Dispute Resolution Panel as well as before

the Assessing Officer. As per sub-section (3) of Section 144C, the Assessing Officer would complete the assessment on the basis of the draft order, if the assessee either intimates his acceptance of the variation or does not raise objections within the time prescribed. Under sub-section (5) thereof, the Dispute Resolution Panel could issue such directions to the Assessing Officer as it thinks fit for his guidance to complete the assessment in case the assessee has raised an objection. Under sub-section (7) thereof, it is open for the Dispute Resolution Panel to make further inquiries or have such inquiries made before issuing the directions made to him in sub-section (5). Sub-section (8) thereof, recognizes the wide powers of the Dispute Resolution Panel to confirm, reduce or enhance the variations proposed in the draft order subject to the limitation that it shall not set aside any proposed variation or issue any direction under sub-section (5) for further enquiry. Under sub-section (10) thereof, every direction issued by the Dispute Resolution Panel would be binding on the assessing officer. Sub-section (13) thereof, further provides that upon receipt of

the directions issued by the Dispute Resolution Panel under sub-section (5), the Assessing Officer shall in conformity with the directions complete the assessment without providing any further opportunity of being heard to the assessee.

8. It is submitted that the non-obstante clause in Section 144C gives an overriding effect to the procedure contained in the Act. It is contended that the respondent did not follow this mandatory statutory procedure prescribed under Section 144C(1) of the Act.

9. The second ground on which the petitioner has assailed the impugned order dated 26.09.2024, is that it is barred by limitation as it was passed after expiry of ten years from the date of pronouncement of the order dated 13.06.2014 by the learned ITAT. In this regard, petitioner has relied upon Section 153(2A) of the Act, which provides for time limit for passing of the order giving effect to the order passed by the ITAT with a direction to decide the issue afresh.

10. Learned counsel for the petitioner submits that the time limit for passing of a fresh assessment order could at best expire within two years from the end of the financial year in which the order under Section 250 or 254 of the Act is received. The respondent ought to have passed the appeal effect orders till 31.03.2017 since the order of the ITAT was passed on 13.06.2014. In this regard, he has relied upon the decision of a Coordinate Bench of this Court in **M/s TNS India Private Limited v. Union of India**[1].

11. Learned counsel for the petitioner has apart from that also taken a plea that the petitioner was not accorded a minimum of 30 days' time before passing of the order dated 26.09.2024 in terms of Section 144C(1) of the Act. Eventually, he submits that the impugned order is bad in law on both grounds. Therefore, it may be set aside.

12. Learned counsel for the petitioner submits that, as a consequence, the original return filed by the petitioner for the assessment year 2005-06 has to be accepted and refund claimed

[1] W.P.Nos.853 & 8528 of 2019 dt.09.10.2023

to the tune of Rs.7,80,308/- + the assessment taxes paid and refunds of other assessment years adjusted against the demand of assessment year 2005-06 have to be refunded. In this regard, he has relied upon a decision of the Apex Court in the case of **CIT v. Shelly Products**[2], wherein it was held that in case of failure of the authorities to frame a regular assessment after earlier assessment was set aside or nullified, the tax deposited by the assessee by way of advance tax or self-assessment tax or tax deducted at source is liable to be refunded to the assessee since its retention by revenue would result in breach of Article 265 of the Constitution of India, which prohibits the levy or collection of any tax except by authority of law.

13. Learned counsel has also referred to the decision rendered by the Delhi High Court in **Aricent Technologies (Holdings) Ltd. v Assistant Commissioner of Income-tax**[3]. It is submitted that since the assessing officer failed to pass any order and assessment within the time, the assessment became time barred under Section 153 of the Act and the income returned by

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[2] [2003] 129 Taxman 271 (SC)
[3] [2023] 152 Taxmann.com 299 (Delhi)

the assessee for the relevant assessment year has to be accepted and consequently, any amount which was due to the assessee as refund for the previous assessment year was to be refunded along with interest as applicable.

14. On behalf of the respondent-ACIT, learned Senior Standing Counsel for the Income Tax Department submitted that the learned ITAT *vide* order dated 13.06.2014, allowed the appeal of the assessee for statistical purposes. The order giving effect dated 25.09.2024, was passed by the AO/TPO, has reduced adjustment to Rs.3,61,96,011/-. On the basis of the said order, the respondent-ACIT passed a consequential order dated 26.09.2024 revising the total income of Rs.3,97,79,542/- and arrived at Rs.4,09,49,631/-. It is further submitted that as per Section 144C(1) of the Act, the respondent-ACIT passed order on 26.09.2024, which is a consequential order in conformity with the order dated 25.09.2024 passed by the AO/TPO and not an assessment order unlike a draft assessment order, which is required to be shared with the assessee as per the Act. The transfer pricing adjustments have been reduced to

Rs.3,61,96,011/- from Rs.7,07,47,647/- following the directions of the learned ITAT. It is further submitted that the AO/TPO *vide* purported order dated 25.09.2024 made an upward transfer adjustment to the total income of the petitioner pursuant to the directions issued by the learned ITAT, which resulted in refund of Rs.4.09 crores *vide* consequential order dated 26.09.2024. Therefore, the ground raised by the petitioner with regard to the upward transfer adjustment does not hold water. It is reiterated that since order dated 25.09.2024, is not an order passed under Section 92CA of the Act, which in turn is followed by the procedure laid down under Section 144C of the Act and having direct bearing on the consequential order passed on 26.09.2024, draft of the same was not provided to the petitioner.

15. Counter-affidavit of the respondent, however, fails to give any specific reply to the issue of limitation raised by the petitioner in passing the impugned order dated 26.09.2024.

16. In this regard, we may usefully refer to the provisions of Section 153 of the Act, which provides for time limit for

completion of assessment, reassessment and recomputation. The very provision as regards the time limit to be adhered to by the AO/TPO pursuant to the order of the learned ITAT remitting the matter to the file of the AO by partly allowing the appeal was the subject matter of consideration in the case of **M/s. TNS India Private Limited v. Union of India** (supra) rendered by a coordinate Bench of this Court. The question therein was whether the consequential order could have been passed by the AO beyond the prescribed period of time envisaged under Section 153 of the Act and consequentially, whether after a remand is made by the ITAT, allowing an appeal in part, consequential order needs to be passed either under Section 153(2A)[4] or under Section 153(3)[5] of the Act. Learned Court, after analyzing the provisions of sub-section (2A) and

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[4] 153. Time limit for completion of assessment, reassessment and recomputation.
[(2A) Notwithstanding anything contained in sub-sections (1), (1A), (1B) and (2), in relation to the assessment year commencing on the 1st day of April 1971, and any subsequent assessment year, an order of fresh assessment in pursuance of an order under section 250 or section 254 or section 263 or section 264, setting aside or cancelling an assessment, may be made at any time before the expiry of one year from the end of the financial year in which the order under section 250 or section 254 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner or, as the case may be, the order under section 263 or section 264 is passed by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner.

[5] (3) Notwithstanding anything contained in sub-sections (1), (1A) and (2), an order of fresh assessment or fresh order under section 92CA, as the case may be, in pursuance of an order under section 250 or 254 or section 263 or section 264, setting aside or cancelling an assessment, or an order under section 92CA, as the case may be, may be made at any time before the expiry of nine months from the end of the financial year in which the order under section 250 or section 254 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner or, as the case may be, the order under section 263 or section 264 is passed by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner as the case may be:
Provided that where the order under section 250 or section 254 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner or, as the case may be, the order under section 263 or section 264 is passed by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner as the case may be on or after the 1st day of April, 2019, the provisions of this sub-section shall have effect, as if for the words "nine months", the words "twelve months" had been substituted.

sub-section (3) of Section 153 of the Act and the decisions rendered by the Delhi High Court in **Nokia India (P.) Limited v. Deputy Commissioner of Income Tax**[6] as also a decision rendered by the High Court of Kerala in **Dr. R.P.Patel, Hahneman House, College Road, Kottayam v. The Assistant Commissioner of Income Tax, Circle-1, Kottayam**[7], arrived at a decision that the proceedings impugned therein were drawn beyond a period that is prescribed under sub-section (2A) of Section 153 of the Act.

17. In the instant case, the learned ITAT has, in the order dated 13.06.2014, remitted the matter to the AO/TPO to examine the risk profile of the assessee and other comparables and arrive at appropriate risk adjustment, if it can be quantified at any reasonable basis. For this purpose, the TPO should examine and arrive at revised ALP after giving due opportunity to the assessee. The challenge before the ITAT to the order dated 21.09.2010 of the CIT(A) was on the question of transfer pricing adjustment upheld by the CIT(A). Once the matter was

[6] [2017] 85 Taxman.com 29
[7] WPC No.29193 of 2008 (A) decided on 09.03.2015

remitted to determine the ALP afresh, after scrutinizing the risk profile of the assessee and other comparables and quantify appropriate risk adjustment, the assessment order giving effect to or the consequential order giving effect to that, in any case, could have been passed within the timeline prescribed under sub-section (2A) or sub-section (3) of Section 153 of the Act as per the understanding of the AO/TPO.

18. In the instant case, the matter was remitted to the AO/TPO, by the learned ITAT by order dated 13.06.2014. As per the timeline prescribed under sub-section (2A) of Section 153 of the Act, it could have been passed within a period of one year from the end of the financial year in which the order under Section 250 or 254 of the Act was received and that can be till 31.03.2016 counting one year period from the end of the financial year 2014-15 as per the provision in force. Even as per sub-section (3) of Section 153 of the Act, the timeline of nine months for giving effect to the order could be from the end of the financial year in which the order under Section 154 of the Act was received.

19. In the present case, going by the periods prescribed under sub-section (2A) or sub-section (3) of Section 153 of the Act, the impugned order has been passed after ten years of the order of remand by the learned ITAT dated 13.06.2014 *i.e.*, on 26.09.2024. No explanation worth its claim is evident from the stand of the respondent in the counter-affidavit to explain the time lag of ten years in passing the same order when strict timelines are prescribed under Section 153 of the Act to give effect to either passing fresh assessment order/reassessment order or to give effect to the order passed by the ITAT. In such circumstances, the impugned order dated 26.09.2024, being barred by time, cannot be upheld in the eye of law. As a result thereof, the petitioner would be entitled to refund, along with statutory interest, as per the return of income filed by it with the self-assessed taxes paid by it and refund, if any, for other assessment years adjusted against the demand raised by the relevant assessment year 2005-06. However, as informed by the learned counsel for the revenue, the department has also gone in appeal against the order of the learned ITAT dated 13.06.2014

being I.T.A.No.85 of 2016, which is pending before this Court. As such, we are of the opinion that refund, if any, admissible to the petitioner would be subject to the result of I.T.A.No.85 of 2016.

20. Accordingly, the instant Writ Petition is disposed of.

As a sequel, miscellaneous petitions, pending if any, stand closed. There shall be no order as to costs.

SD/-M. JAWAHAR REDDY
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Assistant Commissioner of Income Tax Circle - 5(1)., Room No. 224, B-Block, 2nd floor. IT tower, AC Guards, Masab Tank, Hyderabad, Telangana, 500004 email- hyderabad.dcit5. @incometax.gov.in
2. One CC to SRI M.NAGA DEEPAK, Advocate. [OPUC]
3. One CC to SRI K.SUDHAKAR REDDY, (Sr SC FOR INCOME TAX). [OPUC]
4. Two CD Copies.

BSK
BS

HIGH COURT

DATED:23/09/2025



ORDER

WP.No.37108 of 2024

DISPOSING OF THE WRIT PETITION
WITHOUT COSTS

(6)

Kpr
27/10/25