(C.R.)

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 13TH DAY OF NOVEMBER 2019 / 22ND KARTHIKA, 1941

WP(C).No.11952 OF 2019(T)

PETITIONER:

FCI OEN CONNECTORS LIMITED
XXIX/2089, TRIPUNITHURA ROAD, THYKOODAM, VYTTILA, KOCHI, KERALA-682019, REPRESENTED BY ITS DIRECTOR, G. RAJAMANI.

BY ADVS.
SRI.JOSEPH MARKOSE (SR.)
SRI.V.ABRAHAM MARKOS
SRI.ABRAHAM JOSEPH MARKOS
SRI.ISAAC THOMAS
SRI.P.G.CHANDAPILLAI ABRAHAM
SHRI.VIPIN ANTO H.M.
SHRI.ALEXANDER JOSEPH MARKOS
SHRI.SHARAD JOSEPH KODANTHARA

RESPONDENTS:

1 THE DEPUTY COMMISSIONER OF INCOME TAX
CORPORATE CIRCLE 1(1), COCHIN-682018.

2 THE INCOME TAX OFFICER(OSD) AND SECRETARY,
DISPUTE RESOLUTION PANEL-2, 'A' WING , 4TH FLOOR, KENDRIYASADAN, KORAMANGALA,, BENGALURU-560034.

R1-2 BY SRI.JOSE JOSEPH, SC, FOR INCOME TAX

OTHER PRESENT:

SC JOSE JOSEPH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11-11-2019, THE COURT ON 13-11-2019 DELIVERED THE FOLLOWING:

(C.R.)

JUDGMENT

The petitioner is a public limited Company engaged in the business of manufacture of connectors and other articles. It is an assessee under the Income Tax Act on the files of the 1st respondent. For the assessment year 2015-16, the petitioner filed its returns and as part of the assessment procedure, it was served with a S.143(2) notice on 15/04/2016. Thereafter, it was served with various notices under Section 142(1) of the Income Tax Act, requiring it to produce various documents in connection with the completion of its assessment. It is relevant to note at this stage that, with effect from 2017, as part of the Government initiative towards e-Governance, there was a move to shift to e-proceedings facility for completion of assessments. Circulars and instructions were therefore issued by the Government of India, Ministry of Finance, in the Department of Revenue, requesting assessees to switch over to the e-proceedings facility available on the integrated platform provided through the Income Tax Business Application project, for completion of their assessments under the Income Tax Act.

2. The e-proceeding facility was introduced initially in seven metro cities, where the said facility was made mandatory for assessees. In Cochin, the e-proceeding facility was permitted as an optional facility for those assessees who wanted to opt for the said facility. For others like the petitioner herein, who did not want to opt for the e-proceeding facility, the department

permitted a continuation of the manual procedure for completion of the assessments. It is therefore that the petitioner, in response to the notices received by him under Section 142(1) Income Tax Act, manually filed the documents sought for by the department through Exts.P5, P7 and P12 communications dated 09/10/2017,12/9/2018 and 28/12/2018 respectively. It would appear that, on a reference to the Transfer Pricing Officer under Section 92 CA of the Income Tax Act, the said officer by order dated 26/10/2018 recommended certain adjustments to the computation of income, in accordance with the Transfer Pricing Norms. Thereafter, the assessing officer prepared a draft assessment order based on the recommendations of the Transfer Pricing Officer, in terms of Section 144(C) of the Act and served a copy of the draft assessment order to the petitioner electronically on 31/12/2018 and manually on 05/1/2019.

3. As per the provisions of sub section 2 of Section 144(C), the petitioner had to file his objections to the draft assessment order, before the Dispute Resolution Panel, within 30 days of receipt by him of the draft order. It is not in dispute that the objection filed by the petitioner was received by the Dispute Resolution Panel on 01/02/2019 as is evident from Ext.P16 communication. The Dispute Resolution Panel, however, issued Ext.P17 show cause notice, asking the petitioner to show cause as to why the objection preferred by it should not be rejected on the ground that it was received by the panel more than 30 days, after the service of the draft assessment order through the electronic mode on 31/12/2018. In response to the said show cause notice, the petitioner assessee informed the the Dispute Resolution

Panel that the draft assessment order was manually served only on 05/01/2019 and hence its objection filed on 01/02/2019 had to be seen as within the permitted time limit of 30 days from the date of service of the draft assessment order. This contention of the petitioner was however, rejected by the Dispute Resolution Panel by Ext.P19 order dated 26/02/2019. Much before this however, on 22/02/2019 itself, by Ext.P20 order, the 1st respondent Assessing Authority passed an assessment order without taking note of the objection filed by the petitioner to the draft assessment order. This was probably on account of the fact that a copy of the objection filed by the assessee to the draft assessment order on 01/02/2019 before the Dispute Resolution Panel was received by the Assessing Authority only on 05/02/2019, which was beyond the period of 30 days from 05/01/2019, the date on which the draft assessment order in manual mode was served on the petitioner assessee. In the writ petition, Ext.P19 order of the dispute resolution panel, and Ext. P20 order of assessment are impugned, *inter alia* on the contention that the Dispute Resolution Panel, as well as the Assessing Authority, ought to have considered the objections filed by the petitioner to the draft assessment order before completing the assessment of the petitioner under the Act.

4. A statement has been filed on behalf of the respondent wherein, the stand taken is that, in as much as the draft assessment order in electronic format was served on the petitioner assessee on 31/12/2018 / 01/01/2019, the petitioner assessee had to file its objection before the Dispute Resolution Panel by 01/02/2019. It is therefore contended that, since the objections of the assessee were admittedly filed only on 05/2/2019, the same was belated vis-a-

vis the dispute resolution panel, as also the Assessing Officer and hence Exts.P19 and P20 orders cannot be seen as vitiated on account of any procedural error occasioned by the respondent.

5. I have heard the learned Senior counsel Sri. Joseph Markose appearing for the petitioner and also Sri. Jose Joseph, the learned Standing Counsel for the Income Tax Department. On a consideration of the facts and circumstances of the case as also the submissions made across the Bar, I find that the e-proceeding facility that was introduced as part of the Government initiative towards e-Governance, in the Income Tax Department, was not made mandatory for proceedings initiated against assessees in Kochi city. Save for the assessees in the seven metro cities specified, of which Kochi is not one, for assessees located elsewhere in the country, the e-proceeding facility was made optional, and if the assessees chose not to opt for the electronic facility, the proceedings vis-a-vis the department had to be conducted manually. The services of notice under Section 142(1) or 143(2) and the replies/objections by the assesses had therefore, to be effected manually, although, in the absence of any objection by the assessee, an electronic service could also have been resorted to by the department. In the instant case, the issue that arises for the consideration is whether, the service of the draft assessment order on the assessee, in terms of Section 144(C) of the Income Tax Act, was effected on 31/12/2018 / 01/01/2019 as contended by the department or only on 05/01/2019 as contended by the petitioner assessee. It is not in dispute that the draft assessment order in electronic format was sent to the petitioner

assessee on 31/12/2018 / 01/01/2019. The department, however, chose to send a manual version of the draft assessment order also to the petitioner assessee, and this was received by the petitioner on 05/01/2019. In terms of Section 144(C)(2) of the Income Tax Act, the petitioner assessee was to submit his objections to the draft assessment order within 30 days of the receipt of the same, and the said objections were to be simultaneously sent to both the Dispute Resolution Panel as also to the Assessing Officer. It is trite, that in matters involving transfer pricing, and where a reference is made to the Transfer Pricing Officer, the final assessment must await the decision of the Transfer Pricing Officer, or in applicable cases, that of the Dispute Resolution Panel. The relevant date in the instant case, which involved a reference to the transfer pricing officer, has to be the date on which the objections were received by the Dispute Resolution Panel and the question to be answered is whether, the objections filed by the petitioner on 1/2/2019 was within the time contemplated under Section 144(C) of the Income Tax Act.

6. In my view, when the petitioner had not opted for the e-proceeding facility, and had chosen to have its assessment proceedings continued in the manual mode, the receipt of the draft assessment order in the manual mode has to be seen as the date of service of the draft assessment order. This would be so because, an assessee that did not opt for the electronic mode for the completion of his assessment proceedings, virtually expresses his lack of confidence in the said facility and thereby chooses to opt for the manual facility in which he reposes greater confidence. Till such time as the electronic

facility is made mandatory for assessees, therefore, the wishes of the assessee have necessarily to be respected by the department. It would also be an aspect of fairness in tax administration that the assessee is not prejudiced on account of service of an order, through a mode that he did not opt for. This court must also remind itself that, in the event of an ambiguity in construing the provisions in a taxing statute, it has to take a view that favours the assessee. I am therefore of the view that it is the receipt of the draft assessment order on 05/01/2019 through the manual mode, that determines the starting point of limitation for the period of 30 days under Section 144(C)(2) of the Income Tax Act, for the petitioner to have submitted his objections before the Dispute Resolution Panel. On reckoning the period of 30 days from 05/01/2019 as aforesaid, I find that the objection filed by the petitioner on 01/02/2019 before the Dispute Resolution Panel was within time. Ext.P19 order of the Dispute Resolution Panel must, on that reasoning, be set aside and I do so. As already noticed, in matters involving transfer pricing, the assessment order by the Assessing Officer must necessarily follow the findings of the Dispute Resolution Panel and hence, based on the finding that Ext.P19 order of the Dispute Resolution Panel is illegal,I have to hold that Ext.P20 order of assessment, that did not await the decision of the Dispute Resolution Panel on merits, is also illegal.

The writ petition is therefore allowed by quashing Exts.P19 and P20 orders and directing the 2nd respondent Dispute Resolution Panel to consider the objections of the petitioner to the draft assessment order on merits, and

pass fresh orders in lieu of Ext.P19 within a period of three months from the date of receipt of a copy of this judgment. The 1st respondent Assessing Officer shall thereafter, complete the assessment proceedings, taking note of the order of the 2nd respondent, and after hearing the petitioner, within a further period of three months from the date of receipt of the order of the 2nd respondent. It is made clear that the findings in this judgment have been entered taking note of the peculiar factual circumstances that arose in the instant case, and hence this judgment is not to be cited as a precedent in subsequent cases.

SD/-

A.K.JAYASANKARAN NAMBIAR
JUDGE

SJ

APPENDIX

PETITIONER'S/S EXHIBITS:

EXHIBIT P1	TRUE COPY OF NOTICE ISSUED UNDER SECTION 143(2) DATED 15.04.2016 BY THE 1ST RESPONDENT.
EXHIBIT P2	TRUE COPY OF THE CIRCULAR DATED 29.09.2017 ISSUED BY THE CBDT.
EXHIBIT P3	TRUE COPY OF THE INSTRUCTION NO.01/2018 DATED 12.02.2018 ISSUED BY CBDT.
EXHIBIT P4	TRUE COPY OF THE NOTICE DATED 21.09.2017 ISSUED BY THE 1ST RESPONDENT U/S.142(1).
EXHIBIT P5	TRUE COPY OF THE LETTER DATED 09.10.2017 OF THE PETITIONER.
EXHIBIT P6	TRUE COPY OF THE NOTICE DATED 30.08.2018 ISSUED BY THE 1ST RESPONDENT U/S. 142(1).
EXHIBIT P7	TRUE COPY OF THE PETITIONER'S LETTER DATED 12.09.2018.
EXHIBIT P8	TRUE COPY OF THE NOTICE DATED 19.09.2018 ISSUED BY THE TRANSFER PRICING OFFICER.
EXHIBIT P9	TRUE COPY OF THE SHOW CAUSE NOTICE DATED 17.10.2018
EXHIBIT P10	TRUE COPY OF THE ORDER DATED 26.10.2018.
EXHIBIT P11	TRUE COPY OF THE NOTICE DATED 16.11.2018 ISSUED UNDER SECTION 142(1).
EXHIBIT P12	TRUE COPY OF THE OBJECTIONS DATED 28.12.2018 FILED BY THE PETITIONER.
EXHIBIT P13	TRUE COPY OF THE INSTRUCTION NO.03/2018 DATED 20.08.2012 ISSUED BY THE CBDT.
EXHIBIT P14	TRUE COPY OF THE DRAFT ASSESSMENT ORDER DATED 31.12.2018.
EXHIBIT P15	TRUE COPY OF THE DRAFT ASSESSMENT ORDER DATED 31.12.2018 SENT TO THE EMAIL ADDRESS

	OF THE EXECUTIVE DIRECTOR OF THE PETITIONER.
EXHIBIT P16	TRUE COPY OF THE OBJECTIONS DATED 30.01.2019 FILED BY THE PETITIONER.
EXHIBIT P17	TRUE COPY OF THE NOTICE DATED 08.02.2019 ISSUED BY THE 2ND RESPONDENT.
EXHIBIT P18	TRUE COPY OF THE OBJECTIONS DATED 12.02.2019 FILED BY THE PETITIONER.
EXHIBIT P19	TRUE COPY OF THE ORDER DATED 26.02.2019 PASSED BY THE 2ND RESPONDENT.
EXHIBIT P20	TRUE COPY OF THE ASSESSMENT ORDER DATED 22.02.2019 PASSED BY THE 1ST RESPONDENT.