Non-Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No.18067 of 2017

Principal Officer LG Electronics India Pvt. Ltd Thr. Its Authorized Signatory Mr. Ashish Agrawal

...Appellant

Versus

Assistant Commissioner of Income Tax, NOIDA and Anr.

...Respondents

W I T H

Civil Appeal No.18068 of 2017

A N D

Civil Appeal No.18281 of 2017

O R D E R

The appellant/assessee under the Income Tax Act, 1961[1] was concerned with the notice issued under Sections 147/148 of the Act; which the High Court refused to interfere with and hence the appeal.

2. Essentially the reassessment was proposed for the Assessment Years 2006-07, 2007-08 and 2008-09 alleging that parent company of the assessee, M/s L.G. Electronics Korea and other associated enterprises were running a Permanent Establishment (PE) in India, thereby obligating the assessee to deduct TDS on the remittances made to the parent company and the associated enterprises. The notices under Section 148 for the relevant years are dated

Signature Not Verified
Digitally signed by KRITI KAPUR
Date: 2024.10.17 13:05:30 IST
Reason:

1 For brevity, "the IT Act"

28.03.2013, 21.03.2014 and 31.03.2015 produced in the respective appeals as Annexures P11, P11 and P1. It was alleged that income of the assessee had escaped assessment, since the failure to deduct TDS brings in a consequence of disallowance of such expenses under Section 40 (a) (i) of the IT Act.

3. The assessee before the High Court urged the ground of limitation pointing out that there is nothing to show that income has escaped assessment due to the failure on the part of the assessee to disclose complete and full facts or that the assessee was guilty of concealment of facts. The reassessment thus is reduced to a mere change of opinion, which cannot be permitted. The Double Taxation Avoidance Agreement (DTAA) between India and Korea was also put forth along with the other grounds.

4. The Division Bench of the High Court found that proceedings were taken against the Korean Company and it is related entities to tax the chargeable income in their hands and there were also proceedings initiated against the appellant company under Section 201 of the IT Act for recovery of amount of tax, not deducted at source. The third consequence, which arose from the survey conducted under Section 133A of the IT Act, was the instant proceedings to disallow the related expenses under Section 40(a)(i) for failure to deduct taxes. The Division Bench left the question of DTAA to be considered in the reassessment proceedings and negatived the contention of limitation; since, there was no disclosure

with respect to the Permanent Establishment of the Korean Company operating in India. The notice under Section 148 for initiating reassessment proceedings under Section 147 does not call for any interference, held the impugned order.

5. Sri Deepak Chopra, Learned Senior Counsel for the assessee, pointed out that the reassessment proceedings were carried out and, in an appeal, there was an order under Section 250 of IT Act communicated, without anything written on the same and enclosing two blank papers. The assessee's further appeal was frustrated, and it is informed that the incumbent CIT (Appeals) NOIDA, who issued the blank order, was later suspended. As of now, unless the notice issued under Section 148 is interfered with, the assessee would be left remediless.

6. Sri Raghavendra P. Shankar, learned Additional Solicitor General, on the other hand, pointed out that the parallel proceedings initiated under Section 201 stand allowed in favour of the assessee by the Income Tax Appellate Tribunal (ITAT). What remains is for the appellant to produce the said order either before the officer who conducted the reassessment or in an appeal instituted, which could be reckoned to delete the disallowance carried out on this ground. The learned ASG would contend that since reassessment order is not produced, he is unable to assist as to whether there were other grounds on which reassessment was carried out.

7. The order of the ITAT from the proceedings under Section 201 is produced as Annexure A1 in I.A. No.118536 of 2025 in C.A. No.18067 of 2017. From a reading of the order, we find that the proceedings initiated under Section 201 were taken in appeal and on the directions of the Dispute Resolution Panel (DRP), the First Appellate Authority modified the order, determining profits at 20% markup on 50% salary cost of the expatriate employees, attributed to the Permanent Establishment of L.G. Korea, in India. It was also noticed that the assessment proceedings initiated against L.G. Korea was quashed by the ITAT for non-implementation of the directions of the DRP. The said appellate orders for the assessment years 2005-06 to 2010-11 were not challenged, since it had low tax effect. The ITAT, in the proceedings under Section 201, held that there is no tax liability on the payee i.e. L.G. Korea and hence there is no obligation on the assessee to withhold tax under Section 195 of the Act. The appellant/assessee was found not liable to be treated as an 'assessee-in-default' under Section 201 of the Act. If the assessee cannot be treated as an 'assessee-in-default' under Section 201, necessarily there cannot be any disallowance made under Section 40(a)(i) of the IT Act and hence even if the reassessment proceedings have been carried out, we are of the opinion that it requires no remand to the Assessing Officer.

8. We also take note of the submission of ASG that there could be

other grounds on which reassessment was actually carried out, which we cannot subscribe to. The notice under Section 147 was only with respect to the default under Section 201 and the disallowance of the expenses claimed under Section 40(a)(i) of the Act. If the ground on which reassessment is found to be initiated is untenable, then there is no question of any other ground coming forth in the reassessment proceedings being utilized for the purpose of determining escapement of income. We, hence, hold that the reassessment proceedings initiated are unenforceable for the assessment years 2006-07 to 2008-09. The appellant shall produce our decision and the decision of the ITAT produced as Annexure A1 under Section 201 proceedings before the Assessing Officer who shall close the reassessment proceedings as unenforceable.

9. The appeals are allowed.

10. Pending application(s), if any, shall stand rejected.

..... J.
(J. B. PARDIWALA)

..... J.
(K. VINOD CHANDRAN)

NEW DELHI;
OCTOBER 07, 2026.

ITEM NO.102 COURT NO.6 SECTION III-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No.18067/2017

PRINCIPAL OFFICER LG ELECTRONICS INDIA PVT. LTD. THR ITS AUTHORIZED SIGNATORY MR. ASHISH AGRAWAL Appellant(s)

VERSUS

ASSISTANT COMMISSIONER OF INCOME TAX, NOIDA & ANR. Respondent(s)

[IA No. 118582/2025 - APPLICATION FOR PERMISSION
IA No. 118536/2025 - APPLICATION FOR PERMISSION]

WITH
C.A. No. 18068/2017 (III-A)
IA No. 118518/2025 - APPLICATION FOR PERMISSION

C.A. No. 18281/2017 (III-A)
[IA No. 118527/2025 - APPLICATION FOR PERMISSION]

Date : 07-10-2026 These matters were called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE K. VINOD CHANDRAN

For Appellant(s) : Mr. Deepak Chopra, Sr. Adv.
Mr. Ankul Goyal, Adv.
Ms. Tanvi Aggarwal, Adv.
Mr. Harpreet Singh Ajmani- 2702, AOR

For Respondent(s) :Mr. Raghavendra P Shankar, A.S.G.
Mr. Sudarshan Lamba, AOR
Mr. Karan Lahiri, Adv.
Mr. Shashank Bajpai, Adv.
Mr. Sarthak Karol, Adv.
Mr. Navanjay Mahapatra, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeals are allowed in terms of the signed order.

Pending application(s), if any, shall also stand disposed of.

(KRITIKA TIWARI)
COURT MASTER (SH)

(POOJA SHARMA)
COURT MASTER (NSH)

(signed order is placed on file)