IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	18.02.2021
Pronounced On	02.03.2021

CORAM

THE HON'BLE **MR.JUSTICE C.SARAVANAN**

W.P.No.41473 of 2016
and
W.M.P.Nos.35449 of 2016 & 21889 of 2020

(Through Video Conferencing)

M/s. Doosan Infracore India
Private Limited,
(Amalgamated Company of Doosan International
India Private Limited),
Represented by its General Manager
Mr.Krishnakumar N
3rd Floor, TNPL Building, No.67,
Mount Road, Guindy, Chennai 600 032. ... Petitioner

Vs.

1.The Deputy Commissioner of Income-tax
Corporate Circle 1(1),
6th Floor, Wanaparthy Block,
121, Mahatma Gandhi Road,
Chennai – 600 034.

2.The Assistant Commissioner of Income-tax (OSD)
Corporate Range 1,
6th Floor, Wanaparthy Block,
121, Mahatma Gandhi Road,
Chennai – 600 034.

3.The Principal Commissioner of Income-tax – 1,
7th Floor, New Block, 121,
Mahatma Gandhi Road,
Chennai – 600 034. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records on the file of the second respondent and quash the impugned order in AACCD6947L/2009-10 dated 25.10.2016 along with notice in PAN : AACCD6947L dated 31.03.2016 issued under Section 148 of the Income Tax Act.

For Petitioner : Mr.N.V.Balaji

For Respondents : M/s.Hema Muralikrishnan
Senior Standing Counsel

O R D E R

The petitioner is aggrieved by the impugned order dated 25.10.2016 passed by the second respondent in AACCD6947L/2009-2010 disposing the objections dated 31.05.2016 filed by the petitioner against the invocation of Section 148 of the Income Tax Act, 1961 seeking to reopen the assessment for the Assessment Year 2009-2010 vide notice dated 31.03.2016. The operative portion of the impugned order overruling the objection of the petitioner is reproduced below:-

AO's Observations

There has been no discussion about the reasons for which the case has been reopened now in the original assessment order; while examining the intangible assets, the assessing officer, has examined the issue of non-compete fee alone which was taken into consideration in the order as well while the other components had been overlooked. Hence it cannot be said that an opinion has been formed in this regard which may amount to change of opinion. Therefore, the case laws quoted by the assessee are neither relevant nor applicable in this when there is no discussion on the issue in the assessment order and no details were called for by the Assessing Officer or filed by the assessee on the issue, no finding either positive or negative was arrived at during the course of the original assessment proceedings. Hence there is no question of change of opinion. This point of view is ascertained by the decisions in the following cases – *A.L.A. Firms Vs. CIT (Mad) 102 ITR 622, Ess Kay Engineering Co. (P.) Ltd. Vs.CIT (SC) 247 ITR 818, Revathy C.P. Equipments Ltd. Vs. DCIT & Ors. (Mad) 241 ITR 856, and EMA India Ltd. Vs. ACIT (All) 30 DTR 82*.

In the case of Asst. CIT v. Rajesh Jhaveri Stock Brokers (P) Ltd. [2007] 291 ITR 500/161 Taxman 316 (SC), the Apex Court observed that the expression 'reason to believe' in section 147 would mean 'cause or justification to know' and if the Assessing Officer has cause or justification to know or suppose that income has escaped assessment, he can be said to have reason to believe that income has escaped assessment. It is added that the expression cannot be read to mean that the Assessing Officer should have finally ascertained the fact by legal evidence or conclusion and what is required is 'reason to believe' but not the established

fact of escapement of income and at the stage of issuance of notice, the only question is whether there was relevant material on which a reasonable person could have formed a requisite belief.

It is explicitly clear that where the reason given for effecting reassessment were not the matters considered by the assessing authority while passing assessment order and no opinion was formed in this regard, the contention that no new material have been brought to light to invoke the power and proceedings under section 147 or that it is proposed by way of 'change of opinion' does not contain any pith or substance.

So long as the conditions of section 147 are fulfilled, the Assessing Officer is free to initiate proceedings under section 147 and failure to take steps under section 143(3) will not render the Assessing Officer powerless to initiate reassessment proceedings, even when intimation under section 143(1) has been issued as held by Hon'ble Supreme Court – Shri Krishnan Pvt. Ltd. Vs. Income Tax Officer – Civil Appeal No.1562 of 1977 and Civil appeal No's 2101-03 of 1980 B July 16, 1996.

Moreover the mere production of books of account by assessee before Assessing Officer, there should be no presumption that all books seen by the Assessing Officer. It is duty of assessee to show all relevant particulars in books of accounts, not mere production of books, arguments that Assessing Officer could have been discovered is not correct as held in the case of Kantamaneni Venkatnarayana by Hon'ble Supreme Court *63 ITR 638*.

The principles have also been well settled and reiterated in numerous decisions of the Supreme Court.

As observed in Calcutta Discount Co. Ltd. v. ITO [1961] 41 ITR 191 (SC) mere production of evidence before the ITO would not enough and that if some material for the assessment embedded in the evidence which the revenue could have uncovered but did not do so, it is the duty of the assessee to bring it to the notice of the assessing authority. The assessee knows all the material and relevant facts, the assessing authority might not. In respect of the material failure, the omission to disclose may be deliberate or inadvertent. That was immaterial. But if there is omission to disclose material facts, then subject to the other conditions, jurisdiction to reopen is attracted. If there are some primary facts from which reasonable belief could be formed that there was some nondisclosure or failure to disclose fully and truly all material facts, the ITO has jurisdiction to reopen the assessment.

In the instant case, the officer has applied mind and has recorded the opinion with the belief that there lies an income that has escaped the assessment. The mere fact that the same could have been pointed out by the Audit Party may not make the Assessing Officer to entertain the due jurisdiction and power/duty vested upon him by the IT Act. It was also held by the Hon'ble Supreme Court in various judicial forums, few of which are quoted below:

1. CIT vs. P.V.S.Beedies (P) Ltd. /237 ITR 13.
2. Assistant Commissioner of Income-tax vs. Rajesh Jhaveri Stock Brokers (P) Ltd./291 ITR 500.

Even otherwise, in the case of SomDutt Builders (P) Ltd. Vs. DCIT (ITAT, Kol) 98 ITD 78, the reopening was held valid with the following finding – 'Change of opinion comes to rescue of assessee only when Assessing officer has taken one of permissible views at the time of original proceedings – A wrong

application of law cannot be held as permissible view and that can always be changed for appreciating law.

The merits of the case will be analyzed in the light of various case laws and the facts which will be done during the proceedings by giving due opportunity for hearing for the assessee. The same will be addressed in the assessment order after finalization of discussions.

Thus, it is very clear that the reopening initiated by issue of notice u/s 148 is valid in law and therefore, the objections raised to reopening is hereby disposed off.

The proceedings u/s 147 will be resumed.

2. It is case of the petitioner that a company by name of Doosan International India Private Limited, having its registered office in Bangalore, Karnataka, had entered a Business Transfer (Slump Sale) Agreement dated 29.11.2007 with Ingersoll – Rand (India) Limited for a total sale consideration of Rs.1,031.00 Millions as a going concern.

3. The said company filed its income tax returns for the Assessment Year 2009-2010 on 30.09.2009. The scrutiny assessment was completed on 01.03.2013. During the interregnum, the said Doosan International India Private Limited merged with the petitioner herein pursuant to an order passed by this Court in C.P.No.158 of 2011 on 25.11.2011 and an

order passed by the Karnataka High Court in C.P.No.201 of 2011 on 17.02.2012.

4. Earlier, returns were filed in the name of amalgamated transferor company of Doosan International India Private Limited for the Assessment Year 2009-2010 and an assessment order came to be passed on 01.03.2013 in the original name of the merged company, i.e, Doodsan International India Private Limited, which had by them ceased to exist with the merger with effect from 01.04.2011.

5. After the assessment order dated 01.03.2013 came to be passed for the Assessment Year 2009-2010, an intimation was given both to the Income Tax officer, namely, the Assistant Commissioner of Income Tax at Chennai and Bangalore vide communication dated 08.08.2013 about the merger of the said Doosan International India Private Limited.

6. It is submitted that the second respondent issued notice dated 31.03.2016 under Section 148 of the Income Tax Act, 1961 for reopening the assessment of the Assessment Year 2009-2010 in the name of Doosan

International India Private Limited, a defunct company, which has culminated in impugned order dated 25.10.2016 in the name of the aforesaid company. It is noticed that the notice dated 31.03.2016 was issued under Section 148 of the Income Tax Act, 1961.

7. The petitioner sent a letter to the first respondent asking the reasons for reopening the assessment. The first respondent gave its reasons for reopening the assessment proceedings vide communication dated 29.04.2016. In response to the same, the petitioner also filed its objection dated 01.06.2016. The first respondent thereafter passed the impugned order dated 25.10.2016 and rejected the objection filed by the petitioner. Aggrieved by the same, this Writ Petition has been filed by the petitioner.

8. In this writ petition, the petitioner has challenged the invocation of Section 148 of the Income Tax Act, 1961 for the purpose of re-opening the assessment and for passing fresh assessment order under the provision of Section 147 of the Income Tax Act, 1961 which culminated in impugned order dated 25.10.2016.

9. Reliance was placed on the decision of the Hon'ble Supreme Court in **Principal Commissioner of Income Tax** Vs. **Maruti Suzuki India Ltd.**, 2019 SCC Online SC 928. It is submitted that the impugned order has been passed in the name of the M/s.Doosan International India Private Limited (amalgamated with petitioner) which ceased to exist with the merger. It is submitted that as per the decision of the Hon'ble Supreme Court in **Maruti Suzuki India Ltd.** case referred to *supra*, the impugned order passed by the second respondent overruling the objections of the petitioner against the invocation of Section 148 of the Income Tax Act, 1961 for passing fresh assessment order under the provision of Section 147 of the Income Tax Act, 1961, was liable to be quashed on merits.

10. On merits, it is the contention of the learned counsel for the petitioner that the said company, i.e. Doosan International India Private Limited, had purchased the Utility equipment and attachment of business (including portable compressors and light towers) and Bobcat business (including skid steer loaders) from Ingersoll-Rand Limited pursuant to the

Business Transfer (Slump Sale) Agreement dated 29.11.2007 and claimed depreciation over both the tangible and intangible assets under Section 32 of the Act. As far as the intangible assets are concerned, the said Doosan International India Private Limited had claimed depreciation under the following heads:-

i. Intellectual Property
ii. Customer / Dealer and Vendor lists
iii. Trained employee base
iv. Trademarks
v. Non-compete fees

11. In the scrutiny assessment, the petitioner by its letter/representation dated 21.09.2012 had clearly stated that in the return filed by said Doosan International India Private Limited, the value of intangible assets were as above and that the said company was claiming depreciation under Section 32 of the Income Tax Act, 1961.

12. It is noticed that though the notice dated 11.07.2012 was issued to the said Doosan International India Private Limited, the reply was filed on the letter head of the petitioner company, namely Doosan

Infracore India Private Limited. This was perhaps on account of the fact that the said company had already been merged with the petitioner and stood dissolved without being merged in terms of the order dated 17.02.2021 of the Karnataka High Court in C.P.No.201 of 2011. However, no intimation was given about the same by the petitioner until 08.08.2013. Thus, the jurisdictional officer, within whose jurisdiction the said transfer company, namely Doosan International India Private Limited, was registered, passed an order of assessment on 01.03.2013 in the name of the said company with the PAN No. of the said company. It was argued that the Assessing Officer disallowed only the depreciation claimed on account of the non-compete fees which implied the depreciation claimed under the other head was considered and allowed in the light of the fact that a proper explanation was given for the same.

13. It is submitted that in the reasoning given in the reopening assessment vide communication dated 29.04.2016, the Joint Commissioner of Income Tax (OSD) has merely stated that the said company had acquired the business of M/s.Ingersoll Rand (India) Limited for a consideration of Rs.1,031 millions in November, 2007 and thus,

from 2008-2009 (relevant previous year 2007-2008), the said company has claimed and allowed the depreciation on tangible as well as intangible assets. In the said notice, it has been stated that the said company has treated the Customer / Vendor and Dealer List procured during the course of slump sale / purchase of M/s.Ingersoll Rand (India) Limited as an intangible asset and claimed depreciation at 25%.

14. In the reasons, it was stated that there was no valuation of Customer / Vendor and Dealer List conducted by an approved valuer as this was a slump sale and that as per the business transfer agreement, M/s.Ingersoll Rand (India) Limited has merely transferred the list of Customer / Vendor and Dealer only and business or commercial right has not been transferred.

15. It was stated that there was no stipulation in the business transfer agreement that the said company had to conduct the business or commercial transaction only with the list provided by the M/s.Ingersoll Rand (India) Limited. The said company was not having an absolute right over the list of such Customer / Vendor and Dealer. It has been concluded

that there was wrong claim for depreciation under the Customer / Vendor and Dealer list which was not disclosed truly and fully during the course of assessment proceedings.

16. The learned counsel for the petitioner further submits that the reopening of the assessment vide notice dated 31.03.2016 based on the reasons communicated vide communication dated 29.04.2016 was on account of change of opinion ignoring the fact that there was full and true disclosure by the petitioner when the petitioner participated in the proceedings which has culminated in the assessment order dated 01.03.2013 under Section 143(3) of the Income Tax Act, 1961.

17. It is further submitted that no new facts have come to light before the Authority to conclude that there was suppression of facts or failure to make full and true disclosure warranting invocation of proviso to Section 147 of the Act. The learned counsel for the petitioner places reliance on the following decisions:-

Change of Opinion:-

i. **Commissioner of Income Tax** Vs. **Elgi Finance Limited**, (2006) 286 ITR 674 (Madras) : (2006) 155 Taxman 124 (Madras).

ii. **Fenner (India) Limited** Vs. **Deputy Commissioner of Income-tax**, (2000) 241 ITR 672 (Madras) : (1999) 107 Taxman 53 (Madras).

iii. **Commissioner of Income Tax** Vs. **Foramer France**, (2003) 264 ITR 566 (SC) : (2003) 129 Taxman 72 (SC).

iv. **Foramer** Vs. **Commissioner of Income-tax**, (2001) 247 ITR 436 (Allahabad) : (2001) 119 Taxman 61 (Allahabad).

v. **Commissioner of Income-tax, Delhi** Vs. **Kelvinator of India Ltd.**, (2010) 320 ITR 561 (SC) : (2010) 187 Taxman 312 (SC).

vi. **Commissioner of Income Tax** Vs. **Kelvinator of India Ltd.**, (2002) 256 ITR 1 (Delhi) : (2002) 123 Taxman 433 (Delhi).

vii. **PVP Ventures Ltd.** Vs. **Assistant Commissioner of Income-tax, Corporate Circle 5(2), Chennai**, (2016) 65 taxmann.com 221 (Madras).

viii. **Karti P.Chidambaram** Vs. **Assistant Commissioner of Income-tax, Chennai**, (2018) 402 ITR 488 (Madras) : (2017) 88 taxmann.com 27 (Madras).

ix. **Income Tax Officer, Ward No.16 (2)** Vs. **TechSpan India (P.) Ltd.**, (2018) 404 ITR 10 (SC) : (2018) 92 taxmann.com 361 (SC).

x. **Asianet Star Communications (P.) Ltd.** Vs. **Assistant**

Commissioner of Income-tax, Non-Corporate Circle 20(1), (2020) 422 ITR 47 (Madras) : (2019) 106 taxmann.com 293 (Madras).

xi. **Commissioner of Income-tax, Chennai** Vs. **Schwing Stetter India (P.) Ltd.**, (2015) 378 ITR 380 (Madras) : (2015) 61 taxmann.com 19 (Madras).

xii. **Commissioner of Income-tax – VI, New Delhi** Vs. **Usha International Ltd.**, (2012) 21 taxmann.com 454 (Delhi).

Non existent Company:-

i. **C.I.T. New Delhi** Vs. **M/s.Spice Enfotainment Ltd.**, passed by the Hon'ble Supreme Court in Civil Appeal No.285 of 2014 and batch of cases, dated 02.11.2017.

ii. **Spice Entertainment Ltd.** Vs. **Commissioner of Service Tax**, 2011 SCC OnLine Del 3210 : (2012) 280 ELT 43.

iii. **Principal Commissioner of Income-tax** Vs. **BMA Capfin Ltd.**, (2018) 100 taxmann.com 330 (SC).

iv. **Commissioner of Income-tax-III** Vs. **Dimension Apparels (P.) Ltd.**, (2015) 370 ITR 288 (Delhi) : (2014) 52 taxmann.com 356 (Delhi).

v. **Commissioner of Income-tax (C)-II** Vs. **Micra India (P.) Ltd.**, (2015) 57 taxmann.com 163 (Delhi).

vi. **Marshall Sons & Co. (India) Ltd.** Vs. **Income Tax**

Officer, (1997) 223 ITR 809 (SC) : (1996) 89 Taxman 619 (SC).

vii. **Rustagi Engineering Udyog (P.) Ltd.** Vs. **Deputy Commissioner of Income-tax**, (2016) 382 ITR 443 (Delhi) : (2016) 67 taxmann.com 284 (Delhi).

18. The learned counsel further submits that the concept of block assessment was introduced in the year 1986. Intangible asset was recognized as an asset which could be subject to depreciation of purpose of computation of income with effect from 1999 and since the assessee had claimed the depreciation on the Customer / Vendor and Dealer list during the Assessment Year 2008-2009, the depreciation claimed during the subsequent years cannot be denied.

19. The learned counsel for the petitioner also attempted to distinguish the recent order of this Court in **M/s. Mando Automotive India Private Limited** Vs. **The Deputy Commissioner of Income-tax,** in W.P.No.2779 of 2017, dated 12.02.2021. He further submitted that the assessment order dated 01.03.2013 had been appealed by the petitioner though the Assessment pertains to the transferred company.

20. Defending the impugned order passed by the second respondent, the learned senior standing counsel for the respondents submits that the impugned order itself is very clear and that the merits of the case will be analyzed in the light of the various particulars by giving an opportunity to the petitioner for personal hearing and therefore, this Writ Petition was premature.

21. The learned senior standing counsel further submits that the arguments of the learned counsel for the petitioner that since the depreciation was allowed on Customer / Vendor and Dealer list during the Assessment Year 2008-2009, *ipso facto* will not mean that for the subsequent Assessment Years, the same cannot be rejected. It is further submitted that the petitioner had wrongly claimed the depreciation on four items during the Assessment Year, i.e 2008-2009. The Original Authority had denied the depreciation on non-compete fees. She further submits that each of the other Assessment Year is different and there is no estoppels under law against the reopening the assessment.

22. The learned senior standing counsel for the respondents further submits that the transferred company which got merged with the petitioner has made internal allocation of the assets without any valuation and has wrongly claimed depreciation on the value allocated for the Customer / Vendor and Dealer list. She further submitted that the claim for depreciation under the heads of Customer / Vendor and Dealer list goes to the very root and it would be require a proper determination as to whether there is intangible asset on such Customer / Vendor and Dealer list. She places reliance on the decision of the Hon'ble Supreme Court in **Girilal & Co.** Vs. **Income-tax Officer, Mumbai**, (2016) 9 SCC 510 : (2016) SCC OnLine SC 1035, wherein, it has held as follows:-

> **3.** It is clear from the above that this information was supplied as there was some query about the value of the land. Obviously, while going through this document, the assessing officer would examine the value of the land. **However, the reason for issuing notice under Section 148 of the Income Tax Act was that the appellant had not correctly disclosed the actual assets of the plot and hence, it was not entitled for deduction under Section 80-IB(10) of the Act. The Income Tax Authority itself has mentioned in the notice under Section 148 of the Act that such information was available only in the valuation report. Giving the information in this manner shall be of no help to the appellant as**

the assessing officer was not expected to go through the said information available in the valuation report for the purpose of ascertaining the actual construction of the plot.

23. The learned senior counsel for the respondents submits that there is no change of opinion and therefore prays for dismissal of this writ petition.

24. I have considered the arguments advanced on behalf of the petitioner and the respondents Income Tax Department.

25. Before proceeding further, I shall first deal with the preliminary submission of the learned counsel for the petitioner that the entire re-assessment proceeding was without jurisdiction on the ground that the re-assessment order was made in the name of Doosan International India Private Limited, a defunct company which has since merged with the petitioner. Reliance was placed on the decision of the Hon'ble Supreme Court in **Principal Commissioner of Income Tax** Vs. **Maruti Suzuki India Ltd.**, 2019 SCC Online SC 928. The facts are distinguishable in the present case. The said decision is not applicable to the facts of the present

case. In the present case, the transferor company Doosan International India Private Limited had filed a regular return on 30.09.2009 under Section 139 of the Income Tax Act, 1961.

26. Later, the transferor company Doosan International India Private Limited was merged/amalgamated with the petitioner and was ordered to be liquidated without being wound up by an order dated 25.11.2011 of this Court and an order dated 17.02.2012 of the Karnataka High Court.

27. As a result of the amalgamation/merger, the said Doosan International India Private Limited, assessee company stood merged with the petitioner company from the effective date as per the sanctioned scheme of amalgamation.

28. Though the assessee company Doosan International India Private Limited stood merged/amalgamated with the petitioner company, no information was given about the merger to the jurisdictional Income

Tax Officer or the Asst. Commissioner of Income Tax at Bangalore by the petitioner.

29. In the assessment proceeding, the petitioner replied to the notice issued under Section 142(1) of the Income Tax Act, 1961 in the name of Doosan International India Private Limited though on its letter head. The petitioner participated in the proceedings before the jurisdictional Asst. Commissioner of Income Tax, Bangalore and made submissions on 21.09.2012 and on 07.01.2013 without any demur.

30. Thus, the assessment order dated 01.03.2013 also came to be passed in the name of the said Doosan International India Private Limited even the said company ceased to exist and stood merged/amalgamated with the petitioner.

31. If the petitioner felt that the assessment order was made in the wrong name of the merged transferred company which had ceased to exist, it should have filed a suitable application for rectification of mistake

before the Asst Commissioner of Income Tax Bangalore for effecting the name change in the assessment order dated 01.03.2013.

32. In fact, it was incumbent on the part of the petitioner to have informed the Asst. Commissioner of Income Tax at Bangalore about the merger/amalgamation. In any event, it was for the petitioner to have taken step to correct the name in the assessment order or in the alternative file a composite return for the Assessment Year 2009-10 with the petitioner's PAN Number for both the petitioner and Doosan International India Private Limited and regularized the changes in accordance with the Act.

33. Mere intimation under Section 127 of the Income Tax Act, 1961 for transfer the file to the jurisdictional Income Tax Office at Chennai was not sufficient.

34. In the communication addressed to the Deputy Commissioner of Income Tax, Bangalore on 08.08.2013, the petitioner merely asked for transfer of the file to the respondents but did not take any steps for rectifying the mistake.

35. Even during the re-assessment proceeding, the petitioner actively participated in the said proceedings on the understanding that the assets and liabilities of Doosan International India Private Limited stood vested with the petitioner and that the petitioner was representing its interest by defending the proceedings seeking to reopening of the assessment vide notice dated 30.03.2016 issued under Section 148 of the Income Tax Act, 1961.

36. Therefore, it would be absurd to hold that the order has been passed in the name of a defunct company to scuttle the re-assessment proceeding. Amalgamation cannot be used as a tool to defeat assessment and re-assessment proceedings as the sanctioned scheme of amalgamation itself takes care of such eventualities. It cannot be used to subvert assessment proceedings.

37. Clause 4.6 of the sanctioned Scheme of Amalgamation makes it clear that scheme was drawn up to comply with the conditions relating to "Amalgamation" as specified in Section 2 (1B) of the Income Tax Act, 1961. It also states that any terms or provisions of the Scheme which are

found or interpreted to be inconsistent with the provisions of the said Section at a later date including resulting for an amendment of law or for any reason whatsoever after the effective date, the provisions of the said section of the Income Tax Act, 1961 shall prevail and the scheme shall stand modified to the extent determined necessary to comply with the aforesaid Section of the Income Tax Act, 1961 and such modification shall however not affect other parts of the scheme. The definition in Section 2(1B) of the Income Tax Act, 1961 makes it clear that all the liabilities of the amalgamating company or companies immediately before the amalgamation becomes the property of the amalgamated company by virtue of the amalgamation.

38. Facts also do not indicate that the petitioner had questioned the jurisdiction of the respondent when the notice dated 31.03.2016 was issued in the name of transferor company Doosan international Private Limited. Therefore, the preliminary objection of the petitioner regarding the jurisdiction of the respondent to reopen the assessment stands overruled.

39. Coming to the merits of the case, it is evident that the merged/transferor company, namely Doosan International Private Limited, had entered into a Business Transfer (Slump Sale) Agreement dated 29.11.2008 with M/s.Ingersoll - Rand India Private Limited and purchased a Division of the said company as a going concern.

40. While filing the income tax return under Section 139 of the Income Tax Act, 1961, M/s.Doosan International Private Limited, the transferor company which had subsequently been merged with the petitioner had claimed depreciation on the following headings:-

i. Intellectual Property: Rs. 382.13 million
ii. Right to Use Trademark:140.10million
iii. Customers database and relationship - 124.19 million
iv. Vendor relationship-31.23million
v. Dealer Network-27.06million
vi. Trained Employee Base-43.58Million

vii.Non-Compete Fees-27.62
viii.Goodwill-156.08

41. The above allocation of the amounts towards various items under the category of "intangible goods" was made by the said company

internally. There is no valuation. In the Assessment order dated 01.03.2013, the Assessing Officer has merely disallowed the depreciation on non-compete fees on the ground that depreciation on non-compete fees cannot be claimed in the light of the few decision cited therein.

42. In the reasons given for reopening of the assessment vide communication dated 29.04.2016, it has been mentioned that Customers/Vendor and Dealer List was not an intangible asset to claim depreciation and that mere list of Customers/Vendor and Dealer would not entitle the company to claim depreciation.

43. Since the notice has been issued for reopening the assessment on the last day of the limitation under proviso to Section 147 of the Income Tax Act, 1961, it is incumbent on the part of the respondents to have reasons to believe that there was a failure on the part of the said company to truly and fully disclose all material required for assessment.

44. From a reading of the reply filed by the petitioner on behalf of the said company at the time of assessment, it is evident that there was no

explanation offered for claiming depreciation on the amount claimed and allocated towards the purported Customers/Dealer and Vendor List.

45. In the reply to notice dated 11.7.2012 issue under Section 142(1) of the Income Tax Act, 1961, the petitioner has merely given a breakup. It did not give any document to substantiate the depreciation on the Customer/Dealer and Vendor lists. Thus, it cannot be said that the petitioner had truly and fully disclosed all material that was required for assessment. Therefore, there can be no interference at this stage of re-assessment.

46. In any event, the claim for depreciation on the Customer/Dealer and Vendor lists goes to the very root of the assessment inasmuch as not only there was no valuation but also it is also questionable whether depreciation can be allowed towards Customer/Dealer and Vendor lists based on an internal allocation made by the said company. It is therefore for the petitioner to explain before the respondent that it was indeed entitled to claim depreciation on the Customer/Dealer and Vendor lists.

47. Therefore, I find no merits in quashing the impugned order in the light of the above reasonings. Therefore, the second respondent is directed to complete the re-assessment in accordance with law. It is however made clear that during re-assessment proceeding, the respondent shall confine to the issue relating to the claim of the petitioner for depreciation on the Customer/Dealer and Vendor lists alone which is sought to be questioned and denied in the re-assessment proceeding.

48. It is also made clear that the respondent shall pass appropriate order in accordance with law uninfluenced by the reasonings given in the impugned communication and the observations contained herein touching on the merits of the case of the petitioner.

49. It is for the petitioner to substantiate its claim for depreciation on the Customer/Dealer and Vendor lists with proper documents regarding its valuation within a period of thirty days from the date of receipt of a copy of this order before the second respondent.

50. The second respondent shall pass appropriate order in

accordance with law within a period of three months from date of receipt of a copy of this order since the dispute pertains to the Assessment Year 2009-10.

51. Writ petition stands disposed of with the above observation. No costs. Consequently, connected Miscellaneous Petitions are closed.

02.03.2021

Index : Yes/No
Internet : Yes/No
jen

To
1.The Deputy Commissioner of Income-tax
Corporate Circle 1(1),
6th Floor, Wanaparthy Block,
121, Mahatma Gandhi Road, Chennai – 600 034.

2.The Assistant Commissioner of Income-tax (OSD)
Corporate Range 1,
6th Floor, Wanaparthy Block,
121, Mahatma Gandhi Road,
Chennai – 600 034.

3.The Principal Commissioner of Income-tax – 1,
7th Floor, New Block, 121,
Mahatma Gandhi Road,
Chennai – 600 034.

C.SARAVANAN, J.

jen

Pre- delivery order
in
W.P.No.41473 of 2016
and
W.M.P.Nos.35449 of 2016
& 21889 of 2020

02.03.2021