



% 13.11.2009

18 to 21#

Present: Mr. Ajay Vohra with Ms. Kavita Jha and Mr. Sachit Jolly
for the petitioner.
Mr. Sanjeev Sabharwal for the respondent.

+ WP (C) No. 13128/2009 & CM No. 14199/2009

WP (C) No. 13133/2009 & CM No. 14203/2009

WP (C) No. 13134/2009 & CM No. 14204/2009

WP (C) No. 13135/2009 & CM No. 14205/2009

(Common Order)

Rule D.B.

Mr. Sanjeev Sabharwal, learned counsel appearing for the respondent, states that having regard to the averments made in these writ petitions, it is not necessary to file the counter affidavit. Accordingly, with the consent of the parties, these matters are heard finally at this stage itself.

Having regard to the nature of the order we propose to pass, it is not necessary to take stock of the facts in greater detail. Suffice is to state that certain additions were made by the AOs in different assessment years and the assessment orders passed by the Assessing Officers (AOs) went in appeal upto the level of the Income Tax Appellate Tribunal (hereinafter referred to as the 'Tribunal'). We are here concerned with the impugned orders passed by the AO giving effect to the orders of the Tribunal.



After the orders of the Tribunal, the petitioner had applications under Section 254(2) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act'), *inter alia*, contending that the Tribunal having held that the expatriate employees employed by Lucent Technologies India Ltd. constituted service PE of the petitioner, the Tribunal did not attribute any income to the aforesaid PE and to that extent there was an apparent error in the order requiring rectification. Applications of all these assessment years were disposed of by the Tribunal *inter alia* observing that since that was not the matter before the Tribunal, there was no error in this behalf. However, it was for the AO to go into quantification while giving effect to the order of the Tribunal.

The grievance of the petitioner is that thereafter the AO passed *ex parte* orders under Section 143(3)/254 of the Act giving effect to the orders of the Tribunal and attributing different percentages of gross revenue from supply of hardware as well as software in different years. The grievance of the petitioner is that the AO should have given a hearing to the petitioner to enable the petitioner to point out the manner in which the effect of the order of the Tribunal had to be properly given, more so, in view of the observations made by the Tribunal while disposing of the applications of the petitioner under Section 254 (2) of the Act.



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Mr. Sanjeev Sabharwal makes a statement, on instructor

the department has no objection for taking such a course of action. He further submits that the order passed by the Tribunal in the application under Section 254(2) of the Act was not on the record of the AO because of which the AO did not grant any such opportunity.

Having regard to the aforesaid statement of Mr. Sabharwal, we set aside the orders dated 9.10.2009 passed by the AO and remit the case back to the AO for passing fresh orders under Section 254/143(3) of the Act after giving opportunity to the petitioner in the manner indicated above.

These writ petitions are allowed in the aforesaid terms.

No costs.


A.K. SIKRI, J.


SIDDHARTH MRIDUL, J.

November 13, 2009
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