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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on : 23rd February, 2015

\+ C.M. Nos.18614/2014 & 2293/2015 in ITA 688/2014

SHANGHAI ELECTRIC GROUP CO. LTD. ..... Appellant
Through Mr. Deepak Chopra, Ms. Rashi Khanna and Ms. Akansha Choudhary, Advs.

versus

DIRECTOR OF INCOME TAX-II ..... Respondent
Through Mr. Kamal Sawhney, sr. standing counsel

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE R.K.GAUBA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. The question of law sought to be urged is with respect to the Income Tax Appellate Tribunal's (ITAT) order in this case remitting the matter to the Assessing Officer (AO) for reconsideration, after appreciating the scope and content of the three agreements, forming the basis of the Dispute Resolution Panel (DRP) exercise in the circumstance of the case.
2. In view of the final order that we propose to make today, the facts are not discussed in detail. The assessee engages in supplying services as offshore Indian companies which were sought to be

brought to tax. The AO, for the assessment year (AY) 2010-11 considered the scope and merits of three agreements. Reassessment notice was issued for AY 2007-08 and 2009-10 on 26.3.2013. Subsequently, on 28.3.2013 draft assessment orders were made by the AO in respect of the pending assessment, i.e. AY 2010-11. The objections were filed before the DRP which made its directions on 30.10.2013. The final assessment order was framed by the AO for AY 2010-11 on 23.12.2013. Aggrieved, the assessee preferred an appeal, being ITA No.344/Del./2014. During the pendency of that appeal, on 26.2.2014 draft assessment orders were made by the AO in respect of AY 2007-08, 2008-09, 2009-10 and 2011-12. The assessee objected to these draft assessments before DRP. While so, on 11.4.2014, a notice under Section 263 was issued by the DRP, in respect of AY 2010-11. Subsequently, an order was made and requiring the AO to give effect to the revision by the DRP on 29.8.2014, under Section 263.

3. The AO finally gave effect to the order of the DRP on 29.1.2014. All this while, the assessee's appeal – ITA 344/2014 (for AY 2010-11) was pending; it was heard and a final decision was pronounced on 5.9.2014. That is the subject matter of the present appeal. Thereafter, in the course of the pending proceedings before the DRP for the other years (for which reassessment was directed) and the subsequent year AY 2011-12, the DRP issued its directions after considering all the contracts – totaling six in number. Pursuant to these directions, the AO framed a final assessment order. Aggrieved, the assessee preferred appeals which are pending before

the ITAT. It is contended that on 13.1.2015 the ITAT granted stay against recovery of demand, for 180 days, in respect of other years, except AY 2010-11.

4. In the background of these facts, it is urged on behalf of the assessee that the ITAT is now seized of the entirety of factual matrix and would be going into the contents of each of the six contracts - though for other years - 2007-08, 2009-10 and 2011-12, it would be in the fitness of things that the matter is remitted to the ITAT rather than to the AO. It is urged that the ITAT, in the order impugned in this case went into the contentions urged, but after noticing in para 15 that the decision of the DRP was cryptic, directed a remand to the AO, who virtually would be re-examining the matter. It is contended that in these circumstances considering that the effect of all contracts is before the ITAT, this Court should direct the matter to be considered and decided by the ITAT rather than AO. Counsel for the revenue urged that the assessee's submissions do not merit acceptance. It was argued that since the DRP had already exercised powers under Section 263 and even the final order was made based upon the revisional order- which is now before the ITAT, this Court should not restrict the scope of the impugned order and seek recourse to a procedure unknown to law, i.e. remitting the matter to higher forum for decision on merits. It is emphasized that all the contracts were not subject matter of scrutiny before AO at the time the assessment order was made for AY 2010-11, counsel for the revenue submitted that given the wide scope of the remand, the AO might well like to include the three contracts

left out from considering in a further reference to the DRP since that aspect was not noticed while essentially framing the draft assessment order on 28.3.2013.

5. We have carefully considered the submissions of the parties. The assessee in substance appears to be arguing that for AY in question 2010-11, the effect and scope of six contracts were gone into by all the statutory authorities, i.e. AO and the DRP and the matter is now pending consideration on the merits of its submissions in all its appeals. It, therefore, urges something which appears to be very simple, i.e. the matter to be remitted to the ITAT rather than AO. The revenue's objection, on the other hand is that the order of remand is an unrestricted one and the AO can, in the given facts of the case, be afforded greater latitude and permitted to go into the content of six contracts and that since the draft assessment was confirmed in three of those, if something emerges from his scrutiny that could be a subject matter of the DRP.

6. This Court notices at the outset that in the present case, whilst framing the initial draft assessment order on 28.3.2013, the assessing officer deemed it expedient to confine the scrutiny to a certain subject matter. Finally the assessment order was made after taking into account the order of the DRP which was naturally determined in turn by the reference in the draft assessment order. Thereafter, the DRP issued notices under Section 263 and made his final order on 29.8.2014. Even at this stage, the DRP did not deem it expedient to enlarge the scope of the scrutiny for AY 2010-11. The DRP's determination in these circumstances, concerning the

AY 2010-11, made earlier on 30.10.2013, stood. It is a matter of record that the revenue did not choose to either reopen the assessment in any manner nor call into question the decision of the DRP in terms of Section 253(2A) which enables revenue to approach the ITAT in respect of any of its grievances against the order of the DIT. This provision was supported by Finance Act, 2012 w.e.f. 1.7.2012 – i.e. before the draft assessment order was made in respect of AY 2010-11. In these circumstances, we are of the opinion that the restricted remand to the AO was not justified. At the same time, this Court is not persuaded to the submissions of the revenue that since the assessee considered the entirety of circumstance for the other years in its order dated 28.11.2014 which led to the final assessment order dated 4.12.2014, which is in turn is the subject matter of the assessee's appeal before the ITAT, the latter course is the most appropriate one. This is because the ITAT's impugned order in this case followed by the DRP was cryptic in its order and had nothing to say in respect of draft assessment order, initially framed on 28.3.2013. In these circumstances and given the fact that the entirety of the circumstance were gone into at two stages i.e. when the first draft assessment was made and subsequently under Section 263, the course of action urged by the revenue given that it also did not articulate grievance of the DRP's order is not appropriate. It would be in the fitness of things that the matter is remitted to the DRP rather than AO which would consider the matter referred to it (on 28.3.2013) and after hearing the submissions of the parties deal

with them with proper reasoned order, but in accordance with law. The DRP shall endeavour to complete its proceedings and make final orders within eight weeks from today. It goes without saying that the AO shall (on receipt of DRP's order) pass the final assessment in accordance with law as mandated in the Income Tax Act.

7. The appeal is disposed of in terms of the above facts.
8. Dasti under signature of the Court Master.

S. RAVINDRA BHAT
(JUDGE)

R.K.GAUBA
(JUDGE)

FEBRUARY 23, 2015
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