2025:DHC:5321-DB

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

% *Date of Decision : 07.07.2025*

\+ **W.P.(C) 2751/2025 & CM APPL. 13132-33/2025**

SALESFORCE.COM SINGAPORE PTE. LTD.

.....Petitioner

Through: Mr Vishal Kalra and Mr Anil Kumar, Advocates.

versus

THE DEPUTY COMMISSIONER OF INCOME TAX, CIRCLE 3(1)(2), INTERNATIONAL TAXATION, NEW DELHI & ANR.

.....Respondents

Through: Mr Siddhartha Sinha, SSC and Mr Srikant Singh and Ms Anu Priya Nisha Minz, Advocates

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE TEJAS KARIA

VIBHU BAKHRU, J. (*ORAL*)

1. The Petitioner has filed the present Petition, *inter alia*, impugning an order dated 21.01.2025 [**impugned order**] passed under Section 147 of the Income Tax Act, 1961 [**the Act**] read with Section 144C(13) of the Act in respect of Assessment Year [**AY**] 2018-19. The Petitioner also impugns the notice of demand dated 21.01.2025 issued under Section 156 of the Act.

2. The Petitioner had filed a return of income for AY 2018-19 on

30.11.2018. The Petitioner's return was selected for complete scrutiny on account of 'large value refund'. The notice under Section 143(2) of the Act was issued on 22.09.2019. Thereafter, on 15.11.2019, a notice under Section 139(9) of the Act was issued pursuant to which the Petitioner filed the rectified return on 22.11.2019, declaring the total income of ₹2,69,11,690/-.

3. While the proceedings for assessing Petitioner's income for AY 2018-19 were pending before the Assessing Officer [**AO**], the AO issued a notice dated 30.03.2022 under Section 148A(b) of the Act calling upon the Petitioner to show cause as why a notice under Section 148 of the Act be not issued in respect of AY 2018-19. This was followed by an order dated 11.04.2022 passed under Section 148A(d) of the Act holding that it was a fit case for issuance of notice under Section 148 of the Act. Pursuant to the said order, the AO also issued the notice under Section 148 of the Act.

4. We are at a loss to understand the requirement for commencing proceedings for reassessment while the assessment proceedings were continuing. Section 147 of the Act provides for assessment/reassessment of income that has escaped assessment. There is no question of income escaping assessment prior to the conclusion of the assessment proceedings.

5. The learned counsel for the Revenue is also unable to point out any provision of the Act which would enable the AO to issue notice under Section 148 of the Act for reopening of the assessment while the assessment proceedings are ongoing and the assessment of the assessee's income chargeable to tax has not been concluded.

6. In our view for this reason alone, the impugned assessment order,

which has been passed is pursuant to the notice issued under Section 148 of the Act is liable to be set aside.

7. On 05.05.2022, the Petitioner complied with the notice under Section 148 of the Act and filed its return which was in line with the rectified return filed on 22.11.2019.

8. Thereafter, AO passed an assessment order dated 23.06.2022 under Section 143(3) of the Act read with Section 144C(13) of the Act determining the Petitioner's total taxable income as ₹2,99,76,05,864/-. The said amount was determined after adding a sum of ₹2,97,06,94,174/- on account of Customer Relationship Management [**CRM**] receipts. The AO construed the CRM receipts as Fees for Technical Services [**FTS**] under the Act as well as under the provision of India-Singapore Double Taxation Avoidance Agreement [**India-Singapore DTAA**].

9. Clearly, with the passing of the assessment order, all other assessment proceedings in respect of AY 2018-19 ought to have been terminated that had commenced prior to the assessment order – even though commenced erroneously – ought to have been concluded. However, the AO continued the parallel proceedings to once again to assess the Petitioner's income, *albeit* in the context of the return filed by the Petitioner in response to the notice issued under Section 148 of the Act. And, passed the draft assessment order dated 26.03.2024 under Section 144C(1) of the Act proposing to assess the Petitioner's income as ₹2,97,89,60,099/- which included an amount of ₹2,95,20,84,409/- as FTS.

10. The Petitioner filed its objections before the Dispute Resolution Panel

[**DRP**] objecting to the said draft assessment order. In the meanwhile, the Petitioner also parallelly challenged the final assessment order dated 23.06.2022 before the learned ITAT being ITA No.1923/Del/2022 in respect of AY 2018-19. The said Appeal was taken up by the learned ITAT alongwith the 3 (three) other Appeals filed by the Petitioner in respect of the AYs 2019-20, 2020-21, and 2021-22. The said Appeals were decided by the common order dated 17.05.2024. The learned ITAT accepted the Petitioner's contention that the CRM receipts could not be construed as FTS under the India-Singapore DTAA, and therefore, were not liable chargeable to tax by virtue of the said treaty.

11. After the learned ITAT rendered the decision on the question whether the amounts received by the Petitioner as CRM receipts were FTS or royalty, the DRP issued the directions dated 10.12.2024 (in the parallel proceedings that there commenced by the AO pursuant to the notice issued under Section 148 of the Act for the same assessment year – AY 2018-19). The DRP observed that the decision of the learned ITAT had attained finality and the additions made on account of the subscription of CRM were required to be deleted.

12. In the meanwhile, the Revenue filed an Appeal under Section 260A of the Act in this Court, being ITA No.567/2024, impugning the common order dated 17.05.2024 in so far as it related to AY 2018-19. The said Appeal was dismissed by this Court by the order dated 11.12.2024.

13. It is material to note that in ***The Commissioner of Income Tax – International Taxation-3 v. Salesforce.com Singapore Pte Limited:*** ITA

No.144/2023, decided on 14.02.2024, this Court had considered the question whether the consideration for CRM services rendered by the Petitioner to its customers in India could be considered as royalty under the India-Singapore DTAA and decided the issue in favour of the Petitioner. The said appeals arose in respect of AY 2010-11 to AY 2017-18. The Revenue's appeal (ITA No. 567/2024) was dismissed by this Court by relying on the aforesaid decision in ITA No. 144/2023. This was also informed to the AO by the Petitioner. Notwithstanding the same, the AO proceeded to pass the impugned assessment order assessing the Petitioner's income at ₹2,97,89,96,099/-.

14. As noted above, the impugned order is unsustainable as it is the result or the culmination of the proceeding that were initiated and continued without any jurisdiction.

15. In any view of the matter, the issues sought to be raised are conclusively settled in favour of the Petitioner in terms of the decision rendered by this Court in ***The Commissioner of Income Tax – International Taxation-3 v. Salesforce.com Singapore Pte Limited*** (*supra*).

16. It is material to note that the Revenue had preferred the Special Leave Petition [***SLP(C) Diary No.12246/2025***] against the said decision before the Supreme Court, which was dismissed by the Supreme Court on 15.04.2025 in terms of the following order:

> "Delay condoned.
> After having heard the learned counsel appearing for the petitioner, we find no error in the impugned judgment of the High Court. The Special Leave Petition is accordingly dismissed.

Pending application, if any, also stands disposed of."

17. In view of the above, the present Petition is allowed. Consequently, the impugned assessment order is set aside. Pending Applications are also disposed of.

VIBHU BAKHRU, J

TEJAS KARIA, J

JULY 07, 2025
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Click here to check corrigendum, if any