

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA No.888/Bang/2018
Assessment Years : 2009-10

M/s Dell International Services India Pvt. Ltd., (for the merged entity Dell India Pvt. Ltd.), Divyashree Greens Sy No.12/1, 12/1A and 13/A, Challaghatta Village, Varthur, Bengaluru-560 071. PAN – AAACH 1925 Q (Old PAN AABCD 8893 L)	Vs.	The Jt. Commissioner of Income Tax, LTU, Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Smt. Tanmayee Rajkumar, Advocate
Revenue by	:	Shri D.K Mishra, CIT (DR)

Date of hearing	:	11.07.2024
Date of Pronouncement	:	22.07.2024

ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

This is an appeal filed by the assessee against the order passed by the Id. CIT(A)-5, Bengaluru dated 18/12/2017 in DIN No. ITA No.53/LTU/ CIT(A)-5/2017-18 for the assessment year 2009-10.

2. The assessee in ground No. 2 has challenged the validity of the re-opening of the assessment framed u/s 147 r.w.s. 143(3) of the Act on the reasoning that it is based on a change of opinion.

3. In the present case, the proceedings u/s 147 of the Act were initiated by issuing a notice u/s 148 of the Act dated 27/3/2014. The assessee in the writ petition has challenged the initiation of the proceeding u/s 147 of the Act, which came to be dismissed by the Hon'ble Karnataka High Court in Writ Petition No. 8901/2015 dated 23/3/2015. Subsequently, the assessee filed a Writ Appeal bearing No. 1145 of 2015, where the Hon'ble Karnataka High Court vide order dated 10/6/2024 has quashed the proceeding-initiated u/s 147 of the Act. The relevant extract of the Writ Appeal is reproduced as under:-

"In the above circumstances, this appeal succeeds and the impugned order of the learned Single Judge is set aside. The assessee's W.P.No.8901/2015 having been favoured, a Writ of Certiorari issues quashing Joint Commissioner's order dated 24.02.2015 (Annexure-P) and also notice dated 27.03.2014 issued u/s.148 r/w Sec.147 of the IT Act, 1961 (Annexure-K) for the Assessment Year 2009-10."

4. In view of the above, the Id. AR before us contended that the assessment proceedings u/s 147 r.w.s 143(3) of the Act is not sustainable and liable to be quashed.

5. On the other hand, the Id. DR could not controvert the arguments advanced by the Id. AR for the assessee. However, the Id. DR submitted that direction can be given to the AO to give effect to the judgment of the Hon'ble Karnataka High Court.

6. We have heard the rival contentions of both the parties and perused the materials available on record. Admittedly, the higher forum being the Hon'ble Karnataka High Court has quashed the proceedings initiated by the Revenue u/s 147 of the Act for the year under consideration. The judgment of the Higher Forum is binding on us. Accordingly, we quash the initiation of the proceeding u/s 147 of the Act.

Once the assessment order has been held as non-sustainable, the question of dealing with the issues on merits raised in the memo of appeal becomes academic and, therefore, the same are dismissed as infructuous. Hence, the ground of appeal of the assessee is partly allowed.

7. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in court on 22nd day of July, 2024

Sd/-

(KESHAV DUBEY)
Judicial Member

Sd/-

(WASEEM AHMED)
Accountant Member

Bangalore,
Dated, 22nd July, 2024

vms

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore