

AFR

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) Nos. 6372, 6375, 6377, 6378 and 6395 of 2022

W.P.(C) No.6372 of 2022

Vedanta Resources Ltd. *Petitioner*

-versus-

*The Asst. Commissioner of Income Tax
International Taxation, Bhubaneswar
and Another* ... *Opposite Parties*

W.P.(C) No.6375 of 2022

Vedanta Resources Ltd. *Petitioner*

-versus-

*The Asst. Commissioner of Income Tax
International Taxation, Bhubaneswar
and Another* ... *Opposite Parties*

W.P.(C) No.6377 of 2022

Vedanta Resources Ltd. *Petitioner*

-versus-

*The Asst. Commissioner of Income Tax
International Taxation, Bhubaneswar
and Another* ... *Opposite Parties*

W.P.(C) No.6378 of 2022

Vedanta Resources Ltd. *Petitioner*

-versus-

*The Asst. Commissioner of Income Tax
International Taxation, Bhubaneswar
and Another* ... *Opposite Parties*

AND

W.P.(C) No.6395 of 2022

Vedanta Resources Ltd. *Petitioner*

-versus-

*The Asst. Commissioner of Income Tax
International Taxation, Bhubaneswar
and Another* ... *Opposite Parties*

Advocates, appeared in these cases:

For Petitioner(s) : Mr. Sachit Jolly, Senior Advocate
Mr. Adhiraj Mohanty, Advocate

For Opposite Parties : Mr. R.S. Chimanka
Senior Standing Counsel
Mr. Avinash Kedia
Junior Standing Counsel

**CORAM:
THE CHIEF JUSTICE
JUSTICE M.S. RAMAN**

JUDGMENT

09.02.2023

Dr. S. Muralidhar, CJ.

1. Vedanta Resources Limited (VRL) has filed these writ petitions questioning the notices dated 31st March, 2021 issued by the Assistant Commissioner of Income Tax, International Taxation, Bhubaneswar (Opposite Party No.1) under Section 148 of the Income Tax Act, 1961 ('Act') as well as the reasons for initiating the reassessment under Sections 147/148 of the Act for the Assessment Years (AYs) 2013-14, 2014-15, 2015-16, 2016-17 and 2017-18.

2. While directing notice to issue in these petitions on 15th March, 2022 this Court directed that no further steps shall be taken pursuant to the impugned notices and orders.

3. One of the grounds of challenge to the impugned notices and the reasons for reopening of the assessment for the aforementioned AYs is that Opposite Party No.1 lacks the jurisdiction to issue the said

notices. Relevant to this issue the facts pleaded are that VRL is a non-resident company incorporated under the laws of United Kingdom (UK) and is also a tax resident of UK. It is pointed out that even at the time of applying for a Permanent Account Number (PAN), VRL had mentioned its London address and the jurisdiction assigned to it by the Income Tax Department (Department) was the Deputy Commissioner of Income Tax (DCIT), International Tax, Circle-1(1)(1), New Delhi.

4. Mr. Sachit Jolly, learned Senior Advocate appearing for the Petitioner VRL has drawn the attention of this Court to the web portal of the Department where in the page titled 'Know Your Jurisdictional AO', the jurisdiction of the Petitioner is indicated as 'Circle International Taxation (1)(1)(1)' with its address at New Delhi. The e-mail id displayed corresponds to the said DCIT. On this basis, it is contended that Opposite Party No.1 i.e. ACIT International Taxation, Bhubaneswar could not have issued the impugned notices to the Petitioner. It is pointed out that the Petitioner has not been made aware of or provided any order passed under Section 127 of the Act transferring the jurisdiction vis-à-vis the Petitioner from Delhi to Bhubaneswar.

5. Referring to the reasons for reopening the assessment, as provided to the Petitioner by the Department, Mr. Jolly submitted that Opposite Party No.1 merely relied upon Form 15CA filed by Vedanta Limited, an Indian company having a unit in Tuticorin in Tamil Nadu, and the order passed under Section 201(1)/1A of the Act in the case of Vedanta Limited and concluded that VRL has business income arising in India in respect of the management

consultancy fees paid to it by Vedanta Limited. He submitted that the proceedings initiated separately against Vedanta Limited in that regard have been challenged before the Madurai Bench of the High Court of Madras which by an order dated 26th April, 2021 in W.P. (C) No.8344 of 2021 stayed the recovery of the demand. He points out that the jurisdiction over the TAN of the Vedanta Limited lies with the CIT (IT), Chennai and Vedanta Limited itself is being assessed to tax on its PAN in New Delhi. It is accordingly submitted that even on this basis, Opposite Party No.1 sitting in Bhubaneswar could not have exercised jurisdiction over the Petitioner VRL.

6. In response to the notice issued in the petitions, a counter affidavit has been filed by the Department enclosing as Annexure-1 an order dated 16th October, 2020 issued by the ACIT (IT)/Nodal Officer, office of the CIT (IT)-I, New Delhi specifying the jurisdiction of the Income Tax Authorities in terms of the powers conferred under Section 120(1)(2) of the IT Act. *Inter alia* through this a proposal appears to have been placed by the ACIT before the CIT (IT)-I for migrating the PAN of VRL from Delhi to Bhubaneswar. It is sought to be contended by the Department in its reply affidavit that “the place of activity/operation of the Petitioner is at Jharsuguda, Odisha”. In support of such submission, it is stated by the Department that VRL had filed an application for a lower deduction certificate under Section 197 of the Act (Form 13) dated 2nd July, 2020 “wherein the Petitioner itself had mentioned its address at Jharsuguda, Odisha”. It is stated that the said application was disposed of by the Opposite Party No.1 in Bhubaneswar by an order dated 14th December, 2020 and a lower deduction certificate

was issued. On this basis, it is contended that Opposite Party No.1 has jurisdiction over the Petitioner.

7. In response to this contention, a rejoinder has been filed by the Petitioner contending that at no point of time did VRL have a place of business at Jharsuguda. It is clarified that the lower deduction certificate had been applied for only because payment was to be received at Jharsuguda and in any event the said certificate was not acted upon. Further it is pointed out that the said certificate pertained to a transaction of 2020 whereas the present reassessment proceedings pertain to AYs 2013-14 to 2017-18.

8. As regards the payment received from the Vedanta Limited as Management Consultancy fees forming subject matter of the reopening, Mr. Jolly points out that this payment was made by Vedanta Limited from its Tuticorin Unit falling under the jurisdiction of the Officer at Madurai. Even by this logic, Opposite Party No.1 has no jurisdiction over the Petitioner. He further submits that in para (ii) of its counter affidavit dated 6th July 2022, the Department admits that the jurisdiction vis-à-vis a non-resident company like VRL stands assigned to the DCIT (International Taxation) Circle-1 (1) (1), New Delhi.

9. During the course of hearing, Mr. R.S. Chimanka, learned Senior Standing Counsel for the Department handed over a sur-rejoinder dated 3rd February 2023 enclosing a copy of an order passed by the Joint Commissioner of Income Tax (International Taxation) Phase-II, Kolkata on 15th November, 2014 under Section 120 of the IT Act and contended that in terms thereof, Opposite Party No.1 would

have jurisdiction over the Petitioner since “the place of activity/operation of the Petitioner is at Jharsuguda, Odisha”. In response to this, it is pointed out by Mr. Jolly, learned Senior Counsel for the Petitioner, that in the absence of an order under Section 127 of the Act, the jurisdiction vis-à-vis the Petitioner could not have been transferred by the CIT (IT)-I, New Delhi to his counterpart in Kolkata and much less to Opposite Party No.1 in Bhubaneswar.

10. The above submissions have been considered. The key question in the present case is whether the Opposite Party No.1 can exercise jurisdiction over the Petitioner-VRL which is a non-resident company incorporated in UK?

11. At the outset, it requires to be noticed that there appears to be an erroneous factual presumption drawn by the Department that the Petitioner has its “place of activity/operation” at Jharsuguda in Odisha. The basis of this submission is the Petitioner having applied for a lower deduction certificate under Section 197 of the IT Act in respect of which an order was passed by the DCIT at Bhubaneswar on 14th December 2020.

12. The Department has been unable to contradict the assertion of the Petitioner it has no place of operation or activity at Jharsuguda in Odisha. It continues to be a non-resident company incorporated in UK. It had applied for a lower deduction certificate in Odisha in 2020 only because it was to receive payment there and in any event such certificate was not acted upon. Further, the AYs in question are 2013-14 to 2017-18 which did not involve any such transaction of

receiving payment at Jharsuguda in Odisha. As pointed out by the Petitioner, the reopening of the assessment appeared to be on the basis of the payment received towards management consultancy fees from Vedanta Limited having a unit in Tuticorin which is under the jurisdiction of the Madurai Commissionerate of the Department. Vedanta Limited itself is being assessed to tax on its PAN in New Delhi.

13. It was sought to be contended by Mr. Chimanka, learned Senior Standing Counsel for the Department that Section 127 of the Act may not have any application to the facts on hand. This contention was contested by Mr. Jolly who referred to Section 127 (2) of the Act.

14. Section 127 of the Act reads as under:

127. (1) The Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Chief Commissioner or Commissioner may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, transfer any case from one or more Assessing Officers subordinate to him (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) also subordinate to him.

(2) Where the Assessing Officer or Assessing Officers from whom the case is to be transferred and the Assessing Officer or Assessing Officers to whom the case is to be transferred are not subordinate to the same Principal Director General or Director General or Principal Chief

Commissioner or Chief Commissioner or Principal Commissioner or Commissioner-

(a) where the Principal Directors General or Directors General or Principal Chief Commissioners or Chief Commissioners Principal Chief Commissioner or Commissioners to whom such Assessing Officers are subordinate are in agreement, then the Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Chief Commissioner or Commissioner from whose jurisdiction the case is to be transferred may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, pass the order;

(b) where the Principal Directors General or Directors General or Principal Chief Commissioners or Chief Commissioners or Principal Chief Commissioners or Commissioners aforesaid are not in agreement, the order transferring the case may, similarly, be passed by the Board or any such Principal Directors General or Directors General or Principal Chief Commissioners or Chief Commissioner or Principal Chief Commissioner or Commissioner as the Board may, by notification in the Official Gazette, authorise in this behalf.

(3) Nothing in sub-section (1) or sub-section (2) shall be deemed to require any such opportunity to be given where the transfer is from any Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) and the offices of all such officers are situated in the same city, locality or place.

(4) The transfer of a case under sub-section (1) or sub-section (2) may be made at any stage of the proceedings, and shall not render necessary the re-issue of any notice already issued by the Assessing Officer or Assessing Officers from whom the case is transferred.

Explanation.—In section-120 and this section, the word "case", in relation to any person whose name is specified in any order or direction issued thereunder, means all proceedings under this Act in respect of any year which may be pending on the date of such order or direction or which may have been completed on or before such date, and includes also all proceedings under this Act which may be commenced after the date of such order or direction in respect of any year.

15. A perusal of Section 127 (2) of the Act indicates that it envisages transfer of cases of an Assessee to an Assessing Officer (AO) not subordinate to the same Commissioner, who originally exercises jurisdiction over the Assessee. In the present case, it is CIT (IT)-1, New Delhi who would have to pass orders transferring jurisdiction of the cases of VRL to O.P. No.1 in Bhubaneswar. The latter is not subordinate to the CIT (IT)-1, New Delhi, but to his counterpart in Kolkata. In such event, under Section 127(2)(a), no such transfer of jurisdiction can take place without affording the Assessee a reasonable opportunity of being heard in the matter. The Department in the present case has not been able to produce any such order, transferring the jurisdiction vis-à-vis VRL from the CIT (IT)-1, New Delhi to Opposite Party No.1 in Bhubaneswar.

16. While in terms of Section 120 of the Act, it might be possible for the CIT (IT), New Delhi to transfer jurisdiction from one Assessing Officer to another within his jurisdiction, there is no

power under Section 120 of the IT Act to transfer jurisdiction to an AO who is not subordinate to the CIT (IT), Delhi. For that purpose, it is only Section 127(2)(a) of the IT Act that could apply. In similar circumstances, the Delhi High Court in an order dated 13th May 2022 in W.P.(C) No.9713/2019 (*Louis Dreyfus Company Asia Pte. Ltd. v. Commissioner of Income Tax (International Taxation-2)*) quashed the notices issued to the Petitioner by the DCIT in Mumbai when in fact that case was subject to the jurisdiction of the DCIT (IT) in New Delhi.

17. For the aforementioned reasons, the Court is not satisfied that the Department has been able to explain the legal basis for Opposite Party No.1 i.e. ACIT at Bhubaneswar exercising jurisdiction over the Petitioner and issuing the impugned notices under Section 148 of the IT Act. The Court, therefore, concludes that the impugned notices were issued by O.P. No.1 without jurisdiction and, therefore, are unsustainable in law. The impugned notices and all proceedings consequent thereto are hereby quashed. This will however not preclude the Department from proceeding hereafter in accordance with law.

18. The writ petitions are disposed of in the above terms.

(Dr. S. Muralidhar)
Chief Justice

(M.S. Raman)
Judge

S.K. Jena/Secy.