IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.09.2015

CORAM:

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

W.P.No.31934 of 2003

and

W.P.M.P.No.38742 of 2003

M.G.M.India Benefit Fund,
No.1, 9th Street,
Dr. Radha Krishnan Salai,
Chennai 600 004.

... Petitioner

-Versus-

The Deputy Commissioner of Income Tax,
Circle-I,
No.121 M.G.Road,
Chennai 600 034.

...Respondent

Writ Petition filed under Article 226 of the Constitution of India for the relief of issuance of Writ of Certiorarified Mandamus calling for the records relating to the petitioner in 22357-M on the file of the respondent and to quash the above said Notice dated 11.03.2003 for the assessment year 1996-97 and consequently direct the respondent not to proceed further.

For Petitioner : Mr.S.Sridhar

For Respondent : Mr.T.Promodkumar Chopda

ORDER

Challenge is to the Notice issued by the respondent under Section 148 of the Income Tax Act, 1961 for reassessment on the ground that there is reason to believe that income chargeable to tax for the assessment year 1996-97 has escaped from assessment, the petitioner is now before this court.

2. The case of the petitioner in brief is as follows:- The petitioner is a partnership firm and it is engaged in the business of Finance and Leasing, lending both on the basis of securities offered and personal guarantee of borrowers. Apart from the above, the

petitioner owned tankers for transporting kerosene from Mangalore and Chennai and the petitioner also derived income from the above tankers by way of hire charges. Besides the above, the petitioner purchased certain feature films and derived income by utilizing the same. The income from all such business were reported in the returns by the petitioner. For the assessment year 1996-97, the petitioner filed return on 30.11.1996 thereby declaring income to the extent of Rs.13,04,070/- and the same was accepted by the respondent on 06.10.1998. In the mean time, a notice under Section 148 of the Act came to be issued on 19.03.1998 assuming jurisdiction under Section 147 of the Act and a consequential assessment was framed on 24.03.2000 in terms of Section 143(3) r/w 147 of the Act by the respondent. There was a difference in respect of income chargeable to tax for the assessment year 1996-97 between the respondent and the petitioner relating to lease rental income on cinematograph films. The petitioner claimed hundred per cent depreciation in respect of cinematograph films. This was accepted by the respondent. While so, the respondent again issued yet another notice under Section 148 of the Act in respect of the assessment year 1996-97 assuming jurisdiction again in terms of Section 147 of the Act calling for the return of income in order to reassess the income for the said assessment year. It is the said notice now under challenge in this writ petition.

3. Heard both sides and also perused the records carefully.

4. Challenge in this writ petition is to the reassessment proceedings. The respondent issued a notice for reassessment on the ground that there is a reason to believe that the petitioner's income chargeable to tax for the assessment year 1996-97 has escaped from assessment. Questioning the jurisdiction of the assessing officer for proceeding further with reassessment, the petitioner is before this court.

5. The learned counsel appearing for the petitioner would submit that Section 147 of the Income Tax Act as well as the proviso to the same are very clear which prescribe that any proceedings made on valid assumption as well as for issuance of notice under Section 148 of the Income Tax Act that was framed reassessment proceeding without recording satisfactory reasons and on the failure of the assessee in disclosing the material facts in the absence of such grounds, the jurisdiction vested with the authority under Sections 147 as well as 148 of the Income Tax Act are questionable. Hence, the petitioner is before this court.

6. The learned senior standing counsel appearing for the respondent would, on the other hand, submit that writ petition itself is premature in nature. For proceeding with reassessment within the limitation period, the power vested with the authority is properly invoked and any ground of agitation with regard to the jurisdiction as well as on merits can be placed before the assessing authority by

the petitioner. It is for the petitioner to file returns and thereafter seek appropriate details from the assessing authority. Hence, he seeks to dismiss the writ petition.

7. Having regard to the above submission and the facts and circumstances of the case, this court is of the considered view that the petitioner could be directed to file necessary returns and thereafter claim necessary particulars from the assessing authority and on receipt of such reasoning for reassessment, the petitioner shall redress his grievance in accordance with law.

8. In the result, the writ petition is disposed of and the petitioner is directed to file necessary returns and thereafter claim necessary particulars from the assessing authority giving adequate reasons within the reasonable time. Upon receipt of such reasoning the petitioner shall file necessary objections and thereafter the assessing authority shall proceed in accordance with law and pass appropriate orders of assessment. Once an order of assessment is passed, it is always open to the petitioner to seek appropriate remedy, if so advised. No costs. Consequently, connected MP is closed.

-s/d-
Assistant Registrar(Records)
dt:12/10/2015

True Copy

Sub-Assistant Registrar

kmk

To
1.The Deputy Commissioner of Income Tax, Circle-I, No.121
M.G.Road, Chennai 600 034.

+1 cc to Mr.S.Sridhar Advocate vide sr.53250
+1 cc to Mr.P.PramodKumar Chopda vide sr.53146

W.P.No.31934 of 2003

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