IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.11.2016

CORAM

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.P. No.18870 of 2015
and
M.P.No.1 of 2015

Megatrends Inc represented
by its Partner Mrs.Mita Kalpesh Patel
66, Flat No.12, Alsusha Flats,
Spur Tank Road, Chetpet,
Chennai-600 031. ... Petitioner

Vs.

1. The Assistant Commissioner of Income Tax
   Non Corporate Circle-3
   (Previously Business Range XV),
   Room No.623-A, VI Floor,
   "Wanaparthy Block (New Block)",
   Aayakar Bhavan,
   No.121, Nungambakkam High Road,
   Chennai-600 034.

2. The Commissioner of Income Tax (Appeals) -IV
   No.108, Nungambakkam High Road,
   Chennai-600 034.

3. The Ministry of Finance represented by
   Revenue Secretary,
   Government of India, North Block,
   New Delhi. ... Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records and quash the impugned notice under Section 148 of the Income Tax Act issued by the first respondent dated 10-2-2015 in PAN AAHFM5300Q for the assessment year 2011-12.

For Petitioner : Mrs.TCA Sangeetha

For Respondents : Mr.T.Ravikumar
assisted by
M/s.Hema Muralikrishnan

O R D E R

Heard Mrs.TCA Sangeetha, learned counsel appearing for the petitioner and Mr.T.Ravikumar assisted by Mrs.Hema Muralikrishnan, learned counsel appearing for the respondents.

2. The petitioner has filed this writ petition praying for issuance of a Writ of Certiorari to quash the notice dated 10.02.2015 issued by the first respondent under Section 148 of the Income Tax Act, 1961. By the said notice, the first respondent has stated that he has reasons to believe that the income chargeable to tax for the Assessment Year 2011-12 has escaped assessment within the meaning of Section 147 of the Income Tax Act, 1961 and proposed to reassess the income for the above said assessment year and the petitioner was called upon to file the Return of Income in the prescribed format. Pursuant to which, it appears that the petitioner has submitted the Return of Income and also made a request to the respondents to furnish the reasons for reopening the assessment. Pursuant to the said request made, the first respondent, by communication dated 13.05.2015, received by the petitioner on 18.05.2015, furnished the following reasons for reopening the assessment:

> "It is seen from the return of income filed on 30.09.2011 for the A.Y. 2011-12 that you had made donations of Rs.1,25,00,000/- u/s.35(1)(ii) to the "BHAROSHA" Society for the Welfare of the Handy Capped for Assessment Year 2011-12. On investigation it had come to light that the trust named "BHAROSHA" Society for the Welfare of the Handy Capped is a bogus trust and is not engaged in any research activity or purpose as expressed in the Gazette Notification. Hence, I have reasons to believe that the taxable income of Rs.1,25,00,000/- has escaped from the assessment."

At that stage, the petitioner has approached this Court by filing this writ petition challenging the notice dated 10.02.2015.

3. I have elaborately heard the learned counsel appearing for the petitioner as well as the learned Standing Counsel appearing for the Revenue and perused the materials available on record including the counter affidavit, reply to the counter affidavit, rejoinder to the counter affidavit as well as typed set of papers.

4. However, it may not be necessary for this Court to go into the factual issues since the writ petition is premature. The Hon'ble Supreme Court in G.K.N. Drive Shafts India Ltd., v. Income Tax Officer and Others [259 ITR 19], held that the Assessing Officer when intending to reopen the assessment for a

particular year has to record reasons in writing and furnish the same to the assessee, if an assessee makes a request and thereafter the assessee has to be given 15 days time to submit objections to the reasons furnished by the officer concerned and on such objections being filed, the officer concerned has to pass a speaking order and communicate the same to the petitioner. This procedure is to be followed by every Assessing Officer in cases relating to reopening as reiterated by several orders of this Court as well as the Division Bench. However, in the instant case, the petitioner approached this Court, challenging the notice dated 10.02.2015 issued under Section 148 of the Income Tax Act that too after receipt of reasons for reopening and this Court cannot examine the correctness of the reasons for reopening or can test the submission by the assessee on the reopening. The learned counsel appearing for the petitioner has referred to various factual averments as set out in the counter and disputed the allegations contained therein by way of reply to the typed set of papers.

5. In my view, the reason for the counter affidavit having been filed by the respondents giving several factual details is on the ground that the petitioner has made certain factual averments and therefore, this Court need not go into those aspects of the matter since the issue is premature and the correctness of the reasons for reopening cannot be tested based on the averments in the counter affidavit and since the petitioner has not filed objections for reopening and if done so, the Assessing Officer shall pass orders whether he is agreeable to the objections of the petitioner or not. The learned counsel appearing for the petitioner relied upon the order passed by the Income Tax Appellate Tribunal, Chennai in ITA No.2316/Mds/2015 dated 18.08.2016 in the case of Smt.Deviyani Dilip Patel v. The Income Tax Officer pertaining to the Assessment Year 2011-12 and submitted that the facts of the said case are identical to that of the present case, wherein the ITAT allowed the appeal and remanded the matter to the Assessing Officer for reconsideration. This Court while examining the correctness of the notice issued under Section 148 of the Income Tax Act, at this juncture cannot examine whether the decision of ITAT would be applicable to the petitioner case more so when the appeal pertains to regular assessment proceedings.

6. In view of the above reasons, this Court holds that the present writ petition is premature. Accordingly, this Court while rejecting the relief sought for by the petitioner, directs the petitioner to submit its objections to the reasons for reopening as furnished by the first respondent, vide proceedings dated 10.02.2015 within a period of 30 days from the receipt of a copy of this order, in which the petitioner shall raise all

issues both factual as well as legal. On receipt of the reply by the petitioner, the first respondent shall consider the same without in any manner being influenced by the observations made in this order and pass a speaking order and communicate the same to the petitioner so as to enable them to workout their remedy available under the Income Tax Act.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

jvm

To

1. The Assistant Commissioner of Income Tax
   Non Corporate Circle-3
   (Previously Business Range XV),
   Room No.623-A, VI Floor,
   "Wanaparthy Block (New Block)",
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2. The Commissioner of Income Tax (Appeals) -IV
   No.108, Nungambakkam High Road,
   Chennai-600 034.

3. The Revenue Secretary,
   Ministry of Finance,
   Government of India, North Block,
   New Delhi.

+1cc to Mr.T.Ravikumar, Advocate, S.R.No.67209
+1cc to Mrs.TCA Ramanujam, Advocate, S.R.No.67398

W.P. No.18870 of 2015
and
M.P.No.1 of 2015

SV(CO)
CA(16/12/2016)