IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29.11.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.20149 of 2015
and M.P.No.1 of 2015

G.S.Krishnan ..Petitioner

/vs/

Assistant Commissioner of Income Tax,
Non-Corporate Circle -13(1),
Annexe Building, 4th Floor,
121, Nungambakkam High Road,
Chennai - 600 034. ..Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of writ of Certiorari, calling for the records in No.AACPK9976D/2008-09 dated 16.06.2015 in relation to Assessment Year 2008-09 on the file of the respondent and quashing the same.

For Petitioner : Mr.M.P.Senthilkumar
For Respondents : Mr.M.Swaminathan
Senior Standing Counsel
M/s.V.Pushpa

O R D E R

Heard Mr.M.P.Senthilkumar, learned counsel appearing for the petitioner and Mr.M.Swaminathan, learned Senior Standing Counsel appearing for the respondents.

2.The petitioner has filed this writ petition challenging the proceedings dated 16.06.2015 which is the proceedings communicating the reasons for reopening the assessment for the year 2008-09 under the provisions of the Income Tax Act.

3.The Hon'ble Supreme Counsel has laid down the procedure to be followed by the assessee in cases when action is initiated under Section 148 of the Income Tax Act, 1961 in the case of GKN Driveshafts (India) Ltd vs. Income Tax Officer and others reported in (2003) 1 SCC 72 and the said judgment is as follows:

1.Heard learned counsel for the parties.

2.Leave is granted.

3.By the order under challenge, a Division Bench of the High Court at Delhi dismissed the writ petition filed by the appellant challenging the validity of notices issued under Sections 148 and 143(2) of the Income Tax Act, 1961. The High Court took the view that the appellant could have taken all the objections in its reply to the notices and that, at that stage, the writ petition was premature. Accordingly, the writ petition was dismissed on 31st January, 2001. Aggrieved by that order, the appellant is in appeal before us.

4.Mr. M.L. Verma, learned senior counsel appearing for the appellant, submits that the impugned notices relate to seven assessment years; that during the pendency of these appeals, in respect of two assessment years, viz., 1995-96 and 1996-97, assessment has been completed against which appeals have been filed. Notices relating to the other five assessment years, viz., 1992-93, 1993-94, 1994-95, 1997-98 and 1998-99, are now the subject-matter of these appeals.

5.We see no justifiable reason to interfere with the order under challenge. However, we clarify that when a notice under Section 148 of the Income tax Act is issued, the proper course of action for the noticee is to file return and if he so desires, to seek reasons for issuing notices. The assessing officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the noticee is entitled to file objections to issuance of notice and the assessing officer is bound to dispose of the same by passing a speaking order. In the instant case, as the reasons have been disclosed in these proceedings, the assessing officer has to dispose of the objections, if filed, by passing a speaking Order before proceeding with the assessment in respect of the abovesaid five assessment years.

6.Insofar as the appeals filed against the order of assessment before the Commissioner (Appeals), we direct the appellate authority to dispose of the same, expeditiously.

7.With the above observations, the civil appeals are dismissed.

8.No costs.”

4.Thus, the appropriate course for the petitioner is to file their objections to the reasons for reopening and if such objections are filed, the Assessing Officer is bound to dispose of the same by passing a speaking order. However, without resorting to such procedure, the petitioner has challenged the reasons for reopening.

5.In the light of the same, this Court holds that the writ petition is pre-mature. However, this will not prejudice the petitioner's rights to raise all contentions in their objections to the reopening of the assessment. The petitioner is directed to file their objections to the reasons for reopening within a period of thirty days from the date of receipt of a copy of this order. On receipt of the objections, the respondent shall pass a speaking order specifically dealing with all the objections and the materials that may be placed on record by the petitioner. Till such orders are passed, no coercive action shall be initiated against the petitioner.

6.With the above observations, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

cse
To

The Assistant Commissioner of Income Tax,
Non-Corporate Circle -13(1),
Annexe Building, 4th Floor,
121, Nungambakkam High Road,
Chennai - 600 034.

+1cc to Mr.S.Sriniranjani, Advocate, S.R.No.70144
+1cc to Mr.M.Swaminathan, Advocate, S.R.No.70222

RJ(CO)
BB(29/12/2016)

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