IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.6.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.19477 & 19478 of 2016
and
W.M.P.Nos.16889 & 16890 of 2016
16891 & 16892 of 2016

M/s.Keesara Plastics Pvt.Ltd.,
rep.by its Director
Shri K.Vijayvardhan Reddy ... Petitioner in both the W.Ps.

Vs

The Assistant Commissioner
of Income Tax,
Corporate Circle 4(2),
Room No.433, 4th Floor,
Main Building,
121, AAYAKAR Bhavan,
Nungambakkam,
Chennai-34 ... Respondent in both the W.Ps.

Petitions filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records of the respondent in PAN AAACK4025C vide Order u/s.271(1)(c) dated 29.4.2016, for Assessment years 2010-2011 and 2011-2012, respectively, and quash the same and consequently direct the respondent to give one more opportunity to the petitioner before passing orders under Section 271(1)(c) of the Income Tax Act 1961.

For Petitioner : Mr.P.J.Rishikesh in both

For Respondent : Mr.P.Rajkumar Jhabakh for Mr.T.Pramodkumar Chopda in both W.Ps.

ORDER

Heard Mr.P.J.Rishikesh, learned counsel for the petitioner and Mr.P.Rajkumar Jhabakh for Mr.T.Pramodkumar Chopda, learned counsel, who accepts notice for the respondent and with the consent of parties, the writ petitions are taken up for final disposal.

2. The petitioner has filed these writ petitions challenging the order passed by the respondent under Section 271 (1)(c) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act' in short). By virtue of the impugned order, the petitioner has been levied with penalty of Rs.2,50,00,000/- for the assessment year 2010-11 and Rs.1,00,000/- for the assessment year 2011-12 and they have been called upon to remit the same. The impugned order has been challenged primarily on three grounds. Firstly on the ground of violation of principles of natural justice; secondly on the ground that in respect of the earlier assessment years, the orders are under scrutiny of the Tribunal as well as this Court and thirdly on the ground that the authority did not take into consideration the recent decision of the Honourable Supreme Court in the case of Commissioner of Income Tax, Ahmadabad vs. Reliance Petroproducts Private Limited - (2010) 11 Supreme Court Cases 762.

3. From the record of proceedings it is seen that the issue as to whether the claim for exemption by the petitioner under Section 80IC of the Income Tax Act is admissible or not is the subject matter of challenge by the petitioner before the Income Tax Appellate Tribunal for the assessment years 2010-11 and 2011-12. In respect of the same issue, for the assessment years 2007-08, 2008-09, 2009-10, the petitioner has challenged the orders passed by the Income Tax Appellate Tribunal before this Court in T.C.A.Nos.164 to 166 of 2015. The respondent issued a show cause notice for the assessment years, namely, 2010-11 and 2011-12, under Section 271(1)(c) of the Income Tax Act, calling upon the petitioner to show cause as to why an order imposing penalty should not be made under Section 271(1)(c) of the Act. The petitioner was directed to appear in person on 14.3.2016 at 11.30 a.m. This show cause notice dated 1.3.2016 was received by the petitioner on 10.3.2016. This is evident from the postal cover, which has been filed along with the material papers, in these writ petitions. Thus, the petitioner had only 3 days in between, to make arrangements to appear for the hearing. It is the case of the petitioner that his Chartered Accountant was away from the country and though he had immediately scanned the copy of the notice and forwarded the same to his Chartered Accountant, he received a reply stating that the Chartered Accountant would be returning only by the end of the month. Since the petitioner did not appear before the respondent, the respondent passed the impugned order dated 29.4.2016.

4. Section 274 of the Income Tax Act states that no order imposing a penalty under Chapter XXI of the Act shall be made unless the assesee has been heard or has been given a reasonable opportunity of being heard. The expression 'reasonable opportunity' could be broadly defined as sufficient

opportunity for a normal person to respond to a proposal made by a statutory authority. There cannot be a straight jacket formula in assessing what is "reasonable opportunity" and each case has to be considered on its own merits taking note of the facts.

5. In the instant case, taking into consideration the fact that the issue whether the petitioner is entitled for exemption under Section 80IC is not only pending before the Income Tax Appellate Tribunal, but also before this Court, as Tax Case Appeals and the petitioner having paid the tax for all the earlier years, one more notice of hearing could have been issued to the petitioner, before finalising the proposal in the notice dated 1.3.2016. This Court is inclined to make this observation because though the notice was dated 1.3.2016, it was dispatched much later and received by the petitioner only on 10.3.2016. Therefore, this Court finds that there is denial of reasonable opportunity to the petitioner. Hence, the matter requires to be remanded for fresh consideration.

6. The other issue, the respondent should consider, is as to what would be the effect of the proceedings, which are now pending before the Income Tax Appellate Tribunal as well as before this Court. The submission of the petitioner is that the entire tax liability for the other years have been cleared. That apart, the respondent, while passing the impugned order, had taken note of the decision of the Honourable Supreme Court in the case of Union of India and Others vs. Dharmendra Textiles Processors and Others - (2008) 306 ITR 277 (SC). In fact, this decision was taken note of by the Honourable Supreme Court in a subsequent decision in the case of Reliance Petroproducts Ltd., (Supra), wherein, the Honourable Supreme Court, while considering the scope of Section 271 (1)(c) of the Act, has held as follows:

> "18. We must hasten to add here that in this case, there is no finding that any details supplied by the assessee in its return were found to be incorrect or erroneous or false. Such not being the case, there would be no question of inviting the penalty under Section 271(1)(c) of the act. A mere making of the claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. Such claim made in the return cannot amount to inaccurate particulars."

7. In the light of the above discussion, this Court is of the view that the petitioner should be afforded one more opportunity to place their objections to the proposal made by the respondent in the show cause notice dated 1.3.2016 and after

affording an opportunity of personal hearing to the petitioner, the respondent should consider all the issues and pass a speaking order.

8. In the light of the above, the writ petitions are allowed. The impugned order is set aside and the matter is remanded to the respondent for fresh consideration, who shall issue a notice of personal hearing to the petitioner, granting them reasonable time and during the course of personal hearing, the petitioner shall place their written objections as well as make oral submissions, after which, the respondent shall consider and pass a reasoned order on merits and in accordance with law. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner
of Income Tax,
Corporate Circle 4(2),
Room No.433, 4th Floor,
Main Building,
121, AAYAKAR Bhavan,
Nungambakkam,
Chennai-34.

+2cc to M/S.P.J.Rishikesh, Advocate sr.33104
+1cc to M/S.T.Pramodkumar Chopda, Advocate sr.33190

W.P.Nos.19477 & 19478 of 2016

rp[co]
srg 28/06/2016