IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.09.2016

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The Hon'ble Mr.Justice T.S.Sivagnanam

Review Application (Writ) No.111 of 2016
and
W.M.P. No.26543 of 2016

M/s. Sella Synergy India Pvt. Ltd.,
1st Floor, "Elnet Software City"
TS - 140, Block 2 & 9, Rajiv Gandhi Salai,
Taramani, Chennai - 600 113. ... Review Petitioner

Vs.

1. The Income Tax Officer,
Company Circle VI (2)
Chennai - 600 034.

2. The Additional Commissioner of Income Tax,
Transfer Pricing Officer VI,
Nungambakkam, Chennai - 600 034. ...Respondents

This Review Application has been filed under Order XLVII Rule 1 r/w 114 of the Code of Civil Procedure against the order passed by this Court in W.P.No.1781 of 2008, dated 01.08.2016.

For Petitioner : Mr.M.V.Swaroop
For Respondens : Mr.J.Narayanaswamy

Standing Counsel

O R D E R

Heard Mr.M.V.Swaroop, learned counsel appearing for the petitioner, and Mr.J.Narayanaswamy, learned Standing Counsel appearing for respondent/Department.

2. This Review Petition has been filed to review the order and direction passed/issued by this Court in W.P.No.1781 of 2008, dated 01.08.2016.

3. The said Writ Petition was filed, challenging the notice issued by the first respondent, dated 28.05.2007. The matter pertains to the issue of re-opening of the assessement under Section 148 of the Income Tax Act.

4. This Court, after elaborately considering the issue, dismissed the Writ Petition with certain directions, and the operative portion of the order reads as follows:-

> "In the light of the above, this Court is not inclined to interdict the proceedings initiated by the first respondent by issuing a writ, and the prayer sought for by the petitioner to quash the notice under Section 148

> of the Act, is held to be not maintainable, and as the petitioner had been communicated with the reasons for reopening by communication, dated 03.10.2007, liberty is granted to the petitioner to submit their objections within a period of three weeks from the date of receipt of a copy of this order, after which, the first respondent shall take a decision thereon on merits and in accordance with law, after affording an opportunity of personal hearing to the petitioner, uninfluenced by any observations made in this order."

5. The learned counsel appearing for the review petitioner vehemently contended that the order requires to be reviewed on the ground that, the finding rendered by this Court based on the decision rendered in the case of **(Baijnath Saboo and others Vs. ITO, J Ward and others)** reported in **1978 (113) ITR 303,** is incorrect, since in the said case, assesee had infact made wrong claim, and the Court held that, that would have no effect on the tax payable by the assessee, and the re-assessment could be quashed. Secondly, the assessee has not claimed a loss at all, much less, a wrong claim of loss.

6. It is settled legal position that Review Petition is not an Appeal in disguise. The contentions raised by the review petitioner are all at best,

could be construed as Grounds of Appeal. Thus, this Court finds that there is no error, apparent on the face of record, and therefore, is not inclined to entertain the Review Petition. When this Court expressed such an opinion, the learned counsel appearing for the review petitioner has submitted that this Court has directed the assesse to follow the procedure in the case of **(GKN Driveshafts (India) Pvt. Ltd., Vs. ITO)** reported in **2003 (259) ITR 19,** and that would also mean that the Assessing Officer should also adhere to the procedure. It is needless to state that the Assessing Officer should adhere to the proper procedure and act in all fairness, if on facts, the assessee is able to establish that no loss was carried by them, then, such facts should not have ignored by the Assessing Officer. In fact, in para No.20, a pointed direction has been issued to the Assessing Officer as to how he has to proceed with the matter. Thus, the Assessing Officer shall proceed with the mater bearing the principles laid down in the case of **GKN Driveshafts (India) Pvt. Ltd., (referred supra).**

7. With the above observations, this Review Application is dismissed. No costs. Consequently, connected W.M.P. is closed.

02.09.2016

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Index : yes/no

Note to Registry : Issue order copy on 06.09.2016

To
1. The Income Tax Officer,
 Company Circle VI (2)
 Chennai - 600 034.

2. The Additional Commissioner of Income Tax,
 Transfer Pricing Officer VI,
 Nungambakkam, Chennai - 600 034.

<u>T.S.Sivagnanam, J.</u>

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