In the High Court of Judicature at Madras

Dated : 08.11.2016

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.38210 of 2016 &
WMP.Nos.32757 & 32838 of 2016

M.Gurusamy ...Petitioner

Vs

The Assistant Commissioner of Income Tax, Non Corporate Circle II, Coimbatore. ...Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records on the file of the respondent relating to the notice issued under Section 148 of the Income Tax Act, 1961 dated 3.2.2016 in PAN No.ACQPG3927Q and quash the same.

For Petitioner : Mr.T.Saikrishnan for M/s.Sai, Bharath & Ilan
For Respondent : Mr.T.Pramod Kumar Chopda, SSC

ORDER

Mr.T.Pramod Kumar, Chopda, learned Senior Standing Counsel accepts notice for the respondent. Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner seeks to quash the notice issued by the respondent under Section 148 of the Income Tax Act, 1961 dated 3.2.2016. In the said notice, the respondent had stated that he has reason to believe that the petitioner's income chargeable to tax for the year 2009-10 escaped assessment within the meaning of Section 147 of the said Act. Therefore, the respondent proposed to assess/re-assess the income for the said assessment year and called upon the petitioner to file the returns in the prescribed form within 30 days.

3. The petitioner sent a representation to the respondent on 4.3.2016 stating that he had already filed the return of income for the said assessment year vide acknowledgement dated 25.6.2009 and requested the respondent that the return of income

already filed, may be treated as due compliance of the impugned notice. Thereafter another representation was sent by the petitioner on 7.9.2016 stating that no particulars have been furnished in the impugned notice and he is not aware of the basis for reopening and reiterated that there are no circumstances justifying reopening.

4. On receipt of the representation dated 7.9.2016, by a communication dated 24.10.2016, the respondent communicated the reasons for reopening.

5. In the light of the decision of the Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd. Vs. ITO [reported in (2003) 259 ITR 19], the petitioner/assessee is entitled to submit their objections to the reasons for reopening. It is only thereafter the respondent has to pass orders either accepting or rejecting the objections so made. Therefore, at this stage of the matter, the question of quashing the impugned notice does not arise in the light of the fact that after issuance of the impugned notice, by a communication dated 24.10.2016, the respondent communicated the reasons for reopening. Therefore, the petitioner has to comply with the directives of the Hon'ble Supreme Court in the decision in GKN Driveshafts and follow the procedure contemplated therein.

6. In the light of the above, the writ petition is disposed of granting 15 days' time from the date of receipt of a copy of this order, to the petitioner to submit his objections to the reasons for reopening communicated by proceedings dated 24.10.2016. On receipt of the objections, the respondent shall consider the same and pass a speaking order on merits and in accordance with law, within a period of 10 days thereafter. Till orders are passed, no precipitative action shall be initiated pursuant to the notice issued under Section 143(2) of the said Act dated 24.10.2016. No costs. Consequently, the above WMPs are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
The Assistant Commissioner of Income Tax, Non Corporate Circle II, Coimbatore.

+1cc to Mr. Sai Bharath, Advocate, S.R.No.64270
+1cc to Mr. T. Pramod Kumar Chopre, Advocate, S.R.No.63812

GJII(CO)
md (9/11/2016)

WP.No.38210 of 2016 &
WMP.Nos.32757 & 32838 of 2016