

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2017

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P No.7861 of 2017
and
W.M.P.No.8582 of 2017

Gopalratnam Santha Mosur
Rep. by Power of Attorney Mr. Arun Kumar
Mehta 244 (Old No. 138) 2nd Floor
Angappan Naicken Street,
George Town Ch- 600 001.
PAN No: BLTPS3488R ... PETITIONER

Vs
Income Tax Officer
(International Taxation)-2(2)
No.16 Grems Road
Chennai 600 006. ... RESPONDENT

Prayer:Writ petition is filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records of the respondent in PAN No.BLTPS3488R for the Assessment Year 2014-15 and quash the order under Section 271(1)(c) dated 22.02.2017 passed therein by the respondent.

For Petitioner : Mr.R.L.Ramani
Senior Counsel
for M/s.J.Sreevidhya

For Respondent : M/s.Hema Muralikrishnan
Standing Counsel

O R D E R

Heard Mr.R.L.Ramani, learned Senior Counsel for the petitioner and Mrs.Hema Muralikrishnan, learned Standing Counsel appearing on behalf of the respondent / Department. As the pleadings are completed, with consent of the learned counsels on either side, the writ petition itself is taken up for final disposal.

2.The petitioner has impugned the order passed by the respondents levying penalty under Section 271(1)(c) of the

Income Tax Act, 1961 [hereinafter called as "the Act"]. The facts which are necessary for the disposal of the writ petition are briefly stated as hereunder:-

2.1.The petitioner was the co-owner of the immovable property situated in Tamil Nadu and she had sold the property and paid the entire capital gain tax applicable in respect of the transaction. The petitioner thereafter claimed 50% of the capital gains tax as rebate under Indo-Canadian DTAA. However, before the assessment proceedings could commence, the respondent issued a notice dated 30.06.2016 referring to Article 13 of Indo-Canadian DTAA and stated that gains from the alienation of any property, other than referred under Clause 1 of Article 13 of the Indo-Canadian DTAA may be taxed in both contracting States and the petitioner's case is that she has transferred the immovable property situated in India and hence, the gains arising on the same is taxable in India.

2.2.It was further stated that there is no provision as per Article 13 of DTAA to claim rebate for the Taxes paid in other country and the petitioner was directed to show cause as to why the rebate claimed of Rs.1,02,90,323/- cannot be disallowed.

2.3.In response to the said show cause notice, the petitioner sent a reply on 28.07.2016, whereby she submitted a revised Income Computation Statement for the Assessment Year 2014-15 after disallowing the rebate claimed and the petitioner enclosed the letter dated 08.07.2016 along with revised computation and requested the respondent to give effect to the revised tax payable and issue the refund at the earliest.

2.4.The revised Computation of Income was scrutinized by the respondent and the assessment was completed by the order dated 26.08.2016. Thereby, the assessed income tax was arrived at a sum of Rs.9,10,60,370/-. In the penultimate paragraph of the assessment order dated 26.08.2016, the respondent has stated that penalty proceedings under Section 271(1)(c) of the Income Tax Act will be initiated separately.

2.5.The petitioner was surprised to note that penalty proceedings would be initiated separately, despite the fact that the entire tax due was already remitted in full and there is no loss of revenue and a mistaken and an inadvertent claim of rebate cannot result in penalty proceedings especially when Income Computation statement was accepted and assessment was completed. As stated in the assessment order, the respondent issued notice under Section 274 read with Section 271 of the Act, dated 26.08.2016. A copy of such notice is found in page 16 of the typed set of papers and it appears to be in printed format. The relevant column has not been filled up except that the respondent had made 'a tick mark' in short paragraph

"have concealed the particulars of your Income or
furnished inaccurate particulars of
such income."

2.6. The petitioner was directed to appear before the respondent to show cause why an order imposing a penalty should not be made under Section 271(1)(c) of the Act and an opportunity of personal hearing was afforded on 20.01.2017. The petitioner, through her authorised representative, appeared before the respondent on 06.02.2017 and also attended the personal hearing. The respondent has passed the order dated 22.02.2017 and levied penalty of Rs.23,31,787/- under Section 271(1)(c) of the Act. This order is impugned in this writ petition.

3. Before examining the correctness of the impugned order, it may be necessary for the Court to see under what circumstances the penalties are imposable under Section 271 of the Act. The said provision falls under Chapter XXI of the Act and Section 271 deals with failure to furnish returns, comply with notices, concealment of income, etc.

4. Sub Section 1 of Section 271 of the Act states that if the Assessing Officer in the course of any proceedings under the Act is satisfied that any person has failed to comply with the notices as specified in Clause (b) of Section 271 or as prescribed under Sub Clause (c) of Section 271 of the Act that any person has concealed the particulars of such income or furnished inaccurate particulars of such income, he may be directed to pay by way of penalty.

5. In the instant case, the respondent has invoked Section 271(1)(c) which reads as follows:-

"271.(1) If the Assessing Officer in the course of any proceedings under this Act, is satisfied that any person--

(a)

(b)

(c) has concealed the particulars of such income or furnished inaccurate particulars of such income.

....."

6. Thus, it has to be seen as to whether in the instant case the petitioner has concealed the income or furnished inaccurate particulars of such income. Admittedly, there is no such allegation made in the show cause notice dated 26.08.2016. As pointed out earlier, the notice is a printed format with some of the relevant portions left blank. In response to the notice, the petitioner had submitted the reply dated 06.02.2017 stating that after she was served notice under Section 143(2) of the Act, she

has furnished all the required documents called for during the course of assessment and the Assessing Officer had asked for the details on rebate claimed by the Assessee as per the DTAA and in response to such show cause notice, the assessee mentioned that she had inadvertently claimed a rebate of 50% on total tax payable and submitted a revised computation withdrawing the rebate claimed.

7. Thus, in the facts and circumstances, there is no concealment of income nor submitting of inaccurate information, as all the relevant details were furnished by the assessee.

8. Further, there has been no misrepresentation of the facts to the Assessing Officer and that the inadvertent claim of rebate on the Tax Liability which has admittedly been paid in the other country shows the intention of the assessee in not to furnish inaccurate particulars or conceal her income.

9. Though the above was the reply given by the petitioner, the respondent in the impugned order would state that but for the scrutiny assessment, the assessee would not have withdrawn her claim, instead, would have received the refund of Rs.1,05,48,140/-. This Court is unable to appreciate the reasoning assigned by the respondent especially when the matter had not attained any finality. The fact that the petitioner had claimed rebate was not a frivolous claim. Probably, on the advice of the authorised representative or Chartered Accountant, at the relevant point of time, the petitioner was led to brief that she is entitled to claim rebate for the taxes paid in the other country. On the notice being issued by the respondent, on being advised, the petitioner has withdrawn the claim and in fact, that was accepted by the respondent and the assessment was completed by the order dated 26.08.2016. Until and unless the respondent had rendered a specific finding that the conduct of the petitioner amounted to concealment of particulars of her income or furnished inaccurate particulars of such income, the question of invoking Clause (c) of Sub Section (1) of Section 271 of the Act does not arise. In fact, certain words and expressions used in the impugned order are uncalled for. There is no reason assigned by the respondent as to how he had formed an opinion that the claim for rebate made by the assessee could be termed as furnishing inaccurate particulars of income. Mere quoting of the statutory provision is not sufficient as the Assessing Officer has to form an opinion that it was a case where penalty proceedings have to be initiated and all the more, reasons are required to justify an order of imposing penalty. These basic parameters had not been fulfilled in the impugned order.

10. The learned Senior Counsel for the Revenue by referring to the decision of the Hon'ble Supreme Court in MAK Data (P.)

Ltd. V. Commissioner of Income-tax-II reported in [2013] 38 taxmann.com 448 (SC) submitted that the impugned order is an appealable order and the petitioner without exhausting appellate remedy could not have filed this writ petition before this Court. Reference was also made to the decision of the Division Bench in the case of Lanxess India (P.) Ltd. V. Assistant Commissioner of Income Tax reported in [2015] 60 taxmann.com 352 (Madras) which has been rendered following the decision in MAK Data (P.) Ltd. (supra).

11. In the case pertaining to MAK Data (P.) Ltd., the assessee filed the return declaring certain income and during the course of the assessment proceedings, it was found by the Assessing Officer that certain documents comprising of share application forms, bank statements etc., had been impounded in the course of survey proceedings conducted in the case of a sister concern of the assessee. By the show cause notice, the Assessing Officer sought for details regarding the documents. In reply, the assessee made an offer to surrender a sum of Rs.40.74 lakhs with a view to avoid litigation and buy peace. The Assessing Officer completed the assessment wherein the amount surrendered was brought to tax and also passed a penalty order under Section 271 (1) (c) of the Act. The Tribunal set aside the order of penalty stating that it cannot be solely based upon the assessee's surrender. The High Court reversed the order passed by the Tribunal and the Hon'ble Supreme Court pointed out that it is not the case of voluntary surrender and the surrender was made in view of the detection made by the Assessing Officer in the search conducted in the sister concern of the assessee.

12. The facts of the present case as has been set forth above would clearly show that there was no allegation against the petitioner of furnishing inaccurate particulars and the petitioner on receiving a notice submitted a response stating that the claim for rebate is not allowable, the petitioner had filed a revised computation statement and accordingly, the assessment was completed. Thus, the withdrawal of the rebate claimed was voluntary and in any event, the same cannot be brought within the expression concealment of particulars or furnishing inaccurate particulars as in the case of M/s.MAK Data (supra). Therefore, the decision of the Hon'ble Supreme Court is clearly distinguishable on facts.

13. In CIT., Ahmedabad Vs. Reliance Petroproducts Private Ltd., in Civil Appeal No.2463 of 2010 reported in 322 ITR 158 (SC), the question which arose for consideration was whether the assessee was liable to pay penalty under Section 271 (1) (c) of the Act. Considering the facts of the said case, to see as to whether the assessee has given inaccurate particulars or not, after noting the dictionary meaning of the word "particulars",

it has been held as hereunder:

9.

"We have already seen the meaning of the word 'particulars' in the earlier part of this judgment. Reading the words in conjunction, they must mean the details supplied in the Return, which are not accurate, not exact or correct, not according to truth or erroneous. 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 the inaccurate particulars."

14. The above decision of the Hon'ble Supreme Court would apply with full force on the present case. The respondent has not rendered any finding that the details supplied by the petitioner in its return were erroneous or false or that a mere claim for rebate would amount to furnishing inaccurate particulars. Thus the impugned order cannot be sustained in the eye of law.

15. For all the above reasons, the writ petition is allowed and the impugned order is quashed. No costs. Consequently, connected miscellaneous petition is closed.

s/d-

Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

may a

To

The Income Tax Officer
(International Taxation)-2(2)
No.16 Greaves Road
Chennai 600 006

+1 CC to Ms. J. Srividhya, Advocate sr 71469.

+1 CC to Ms. Hema Muralikrishnan, Advocate sr 71468.

W.P No.7861 of 2017

SP(04/12/2017)