

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.Nos. 22977 & 22978 of 2017

and

W.M.P.Nos. 24130 & 24131 of 2017

M/s. Indira Industries

Plot No.6, Sipcot Industrial Complex,
Sipcot, Ranipet, Vellore - 632403,

Represented by Partner

Mr.R.Manikandan

... Petitioner in
both WPs.

Vs.

Principal Commissioner of Income-Tax,
Chennai - 600 008

BSNL Building, Tower - II, C-Wing

No.6, Greams Road,

Chennai - 600 006.

... Respondent in
both WPs.

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India praying to issue a writ of prohibition, prohibiting the respondent from proceeding under section 263 of the Income-tax Act, 1961 against the petitioner under C.No. 852 (4)/PCIT-8/2017-18 dated 10.08.2017 & C.No. 852(5)/PCIT-8/2017-18 dated 16.08.2017.

For Petitioner : Mr.M.V.Swaroop

For Respondent : M/s.Hema Muralikrishnan
standing counsel for
Income-tax Dept.

COMMON ORDER

The writ petitions are filed for issuance of Writ of Prohibition prohibiting the respondent from proceeding under section 263 of the Income-tax Act, 1961 against the petitioner in C.No. 852(4)/PCIT-8/2017-18, dated 10.08.2017 & C.No. 852 (5)/PCIT-8/2017-18 dated 16.08.2017.

2. According to the petitioner, assessment for the year 2011-2012 was reopened and was reassessed on the agreed basis and the orders were passed under Section 143(3) r/w 147 of the Income-tax Act, 1961, on 30.12.2016. Now the respondent has issued notices dated 10.08.2017 and 16.08.2017 for revising the said orders on the ground that orders dated 30.12.2016 are erroneous and called upon the petitioner to appear for personal hearing at 4.30 p.m. on 29.08.2017. As per section 263 of the Income-tax Act, 1961, authority can initiate proceedings for revision within two years of the order sought to be revised. In the present case, the period of limitation expired in the year 2013-2014 i.e., two years from the date of original assessment. Further, the respondent cannot raise the issues, which were never raised in the order and proceedings in question. He relied on the following two judgments, which had held as follows:

(i) [2007] 293 ITR 90 (Punjab & Haryana) in (Commissioner of Income-tax v. Sat Pal Aggarwal);

"The facts as noticed by the Tribunal in the statement of case for the assessment year 1981-82 are that a notice under section 148 of the Act was issued to the assessee and there being no response, ex parte assessment was framed. The ex parte assessment was vacated in appeal. Thereafter, the assessee filed a return declaring loss. During the assessment proceedings, at the instance of the Assessing Officer, the assessee agreed to addition of Rs.18,300 after consideration of all the entries. Finding the order passed by the Assessing Officer to be erroneous and prejudicial to the interests of the Revenue, the Commissioner of Income-tax issued notice under section 263 of the Act and directed the Assessing Officer to make fresh assessment keeping in view the discussion in the order passed under section 263 of the Act. In appeal, the order passed by the Commissioner of Income-tax under section 263 of the Act was set aside by the Tribunal for the reason that the assessment having been framed on agreed basis on the discrepancies pointed out by the Assessing Officer, there was no question of holding the order to be erroneous and prejudicial to the interest of the Revenue.

During the course of hearing, learned counsel for the Revenue reiterated the submissions made before the Tribunal and tried to buttress the same with the entries in the accounts, on the basis of which the Commissioner of Income-tax sought to exercise powers under section 262 of the Act, but

he could not dispute that it was on account of those very discrepancies having been pointed out that the assessee had agreed for the addition during the course of reassessment proceedings and the invocation of jurisdiction by the Commissioner of Income-tax on those very facts was nothing else but a change of opinion, which was not permissible. He could not point out any material on record to show that the ingredients as are required to be satisfied before exercise of powers under section 263 of the Act were existent in the present case."

(ii) [2007] 162 Taxman 465 (SC) in (Commissioner of Income-tax, Chennai v. Alagendran Finance Ltd.);

"7. A bare perusal of the order passed by the Commissioner of Income-tax would clearly demonstrate that only that part of order of assessment which related to lease equalization fund was found to be prejudicial to the interest of the revenue. The proceedings for reassessment have nothing to do with the said head of income. Doctrine of merger, therefore, would not apply in a case of this nature."

3. The learned standing counsel for the respondent submitted that the Commissioner of Income-tax has power under Section 263 of the Income-tax Act and there cannot be any time limit for passing revisional order. The impugned proceedings is only a notice directing the petitioner to appear for personal hearing and give objections if any, against the proposed revisional order to be passed against the assessment order dated 30.12.2016. In the judgment relied on by the learned counsel for the petitioner reported in [2007] 293 ITR 90 (Punjab & Haryana) in (Commissioner of Income-tax v. Sat Pal Aggarwal), it is held that it is the change of opinion, therefore, Section 263 of the Income-tax Act cannot be invoked. As per Section 263 of the Income-tax Act, the Commissioner has power to give his opinion that the order of the lower authority is erroneous. Therefore, he issued pre-revisional notice to revise the assessment order dated 30.12.2016 passed under Sections 143(3) read with 147 of the Income-tax Act.

4. Heard the learned counsel for the petitioner as well as learned standing counsel appearing for the respondent.

5. A reading of the impugned notices dated 10.08.2017 and 16.08.2017 reveal that the respondent is seeking to revise the orders dated 30.12.2016 and has given reasons for the said order to be revised. The said impugned notices are issued within two

years from the date of order dated 30.12.2016. Therefore, the contention of the learned counsel for the petitioner that notice issued beyond two years is without merits. The contention of the learned standing counsel for the respondents that the impugned notice is only a notice calling upon the petitioner to appear for personal hearing, has considerable force. Further by the impugned notice, the petitioner is called upon to appear in person or through his/her duly authorised representative along with objections, if any. In view of the fact that by impugned notice, a personal hearing is given to the petitioner to submit his explanation about the proposed revision and impugned notices are issued within two years from the date of order, dated 30.12.2016, this Court is not inclined to grant the relief as sought for by the petitioner. For the above reasons, the judgments relied on by the learned counsel for the petitioner are not applicable to the facts of the present case.

6. In view of the above, the Writ Petitions are liable to be dismissed and they are hereby dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

Principal Commissioner of Income-Tax,
Chennai - 600 008
BSNL Building, Tower - II, C-Wing
No.6, Greams Road,
Chennai - 600 006.

+1 cc to M/s.Hema Muralikrishnan Advocate sr 62166
+1 M/s.M.V.Swaroop Advocate sr nos.62532 62531 dt 31/08

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