

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE T.S. SIVAGNANAM

W.P.No.18411 of 2004
and W.P.M.P.No.21928 of 2004

Madras Suspensions Limited,
3, 3rd Cross Street, DSP Nagar,
Madurai - 625 010.

.. Petitioner

Vs.

Deputy Commissioner of Income-tax,
Company Circle-I, Madurai - 625 002.

.. Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of writ of certiorarified mandamus calling for the records in the matter of re-assessment of the petitioner under Section 147 read with 143 (3) dated 30.03.2004 in file No.49-007-CV-3139 for the assessment year 1996-97 wherein the impugned re-assessment has been made and quash the same.

For Petitioner .. Mr.R.Srinivasan
For Respondent .. Mr.A.P.Srinivas

OR D E R

Heard, Mr.R.Srinivasan, learned counsel appearing for the petitioner and Mr.A.P.Srinivas, learned Standing Counsel appearing for the respondent.

2. The petitioner has filed this writ petition challenging the notice issued by the respondent under Section 147 read with 143(3) of the Income- tax Act, 1961 dated 30.03.2004 for re-assessing the petitioners income for the assessment year 1996-97. The impugned proceedings are challenged primarily on three grounds, namely that the notice of re-assessment dated 26.03.2003, has been issued four years after the completion of the assessment and there is no failure on the part of the assessee to disclose fully and truly primary facts and therefore, the impugned notice is barred by limitation.

3. The second grounds of challenge is that, the

petitioner has furnished all necessary information for making the assessment along with return of income during the original assessment proceedings, which were considered by the assessing officer, reopening of the assessment after expiry of four years from the end of the relevant assessment year is wholly without jurisdiction.

4. The third ground of challenge is by contending that mere escapement of income is insufficient to justify initiation of action under Section 147 of the Act, after expiry of four years from the end of the assessment year and unless such escapement was by reason of the failure on the part of the assessee to file a return referred to in the proviso or to truly and fully disclose the material facts necessary for assessment and unless the conditions in the proviso to Section 147 of the Act is satisfied, the assessing officer does not acquire jurisdiction to initiate proceedings under Section 147 of the Act, after expiry of four years from the end of the assessment year. Further, it is submitted that the impugned proceedings is a clear case of change of opinion and respondent has not been able to place any record to show there were tangible material available with the respondent after the completion of the original assessment.

5. The respondent has filed counter affidavit inter-alia contending that the petitioner company having three units, two units at Madurai and one at Karnataka and the company is having profit from the units one and two and loss from unit three. In the return filed, the petitioner while claiming deduction under Section 80-HH and 80-I, the loss from unit three has not been adjusted. It is further stated that while making deduction under Section 80-HH and 80-I, the assessing officer has not adjusted the loss from unit three and therefore, it is a case, where the assessment has to be reopened under Section 147 of the Act. Thus, the reason for reopening being that the loss from unit three has not been adjusted while, the petitioner claimed deduction under Section 80-HH & 80-I in respect of the profit earned from unit one and two. The question would be, was this material available with the assessing officer who completed original assessment which is sought to be reopened after period of four years from the end of the assessment year.

6. I have perused the return of income filed by the petitioner for the assessment year 1996-97, in which the petitioner has clearly reported the loss for the assessment year 1996-97. Thus, this material was very much available with the assessing officer and the assessing officer while completing the assessment vide order dated 12.03.1999, has considered the same and arrived at permissibly deduction for unit one profit. Therefore, unless and untill the respondent was able to

establish that such claim for direction is the reason of the failure on the part of the assessee to truly and fully disclose material facts, the question of reopening the assessment would not arise. Both in the counter affidavit as well as in the reasons of reopening dated 07.06.2004 there is no allegation that the petitioner has failed to truly and fully disclose material facts necessary for the assessment. In the Fenner (India) Ltd., Deputy Commissioner of Income Tax, the Court considered as to when the extended period of limitation for reopening assessment could be invoked and it was held as follows:-

The pre-condition for the exercise of the power under section 147 in cases where power is exercised within a period of four years from the end of the relevant assessment year is the belief reasonably entertained by the Assessing Officer that any income chargeable to tax has escaped assessment for that assessment year. However, when the power is invoked after the expiry of the period of four years from the end of the assessment year, a further pre-condition for such exercise is imposed by the proviso namely, that there has been a failure on the part of the assessee to make a return under section 139 or in response to a notice issued under section 142 or section 148 or failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for that assessment year. Unless, the condition in the proviso is satisfied, the Assessing Officer does not acquire jurisdiction to initiate any proceeding under section 147 of the Act after the expiry of four years from the end of the assessment year. Thus, in cases where the initiation of the proceedings is beyond the period of four years from the end of the assessment year, the Assessing Officer must necessarily record not only his reasonable belief that income has escaped assessment but also the default or failure committed by the assessee. Failure to do so would vitiate the notice and the entire proceedings. The relevant words in the proviso are,

"....unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee...."

Mere escape of income is insufficient to

justify the initiation of action after the expiry of four years from the end of the assessment year. Such escapement must be by reason of the failure on the part of the assessee either to file a return referred to in the proviso or to truly and fully disclose the material facts necessary for the assessment.

Whenever a notice is issued by the Assessing Officer beyond a period of four years from the end of the relevant assessment year, such notice being issued without recording the reasons for his belief that income escaped assessment, it cannot be presumed in law that there is also a failure on the part of the assessee to file the returns referred to in the proviso or a failure to fully and truly disclose the material facts. The reasons referred to in the main paragraph of section 147 would, in cases where the proviso is attracted, include reasons referred to in the proviso and it is necessary for the Assessing Officer to record that any one or all the circumstances referred to in the proviso existed before the issue of notice under section 147.

After an assessment has been made, in the normal circumstances, there would be no reason for anyone to doubt that the assessment has been made on the basis of all relevant facts. If the Assessing Officer chooses to entertain the belief that the assessment has been made in the background of the assessee's failure to disclose truly and fully all material facts, it is necessary for him to record that fact, and in the absence of a record to that effect, it cannot be held that a notice issued without recording such a fact is capable of being regarded as a valid notice. As to whether the material facts disclosed by the assessee are full and true is always a question of fact and unless the facts disclosed had been examined in relation to the extent of failure if any on the part of the assessee, it is not possible to form the opinion that there had been a failure on the assessee's part to truly and fully disclose the material facts. A notice issued without a record of the Assessing Officer's reasonable belief that there was such failure

on the part of the assessee would be indicative of a failure on the part of the Assessing Officer to apply his mind to material facts, and on that ground also the notice issued would be vitiated.

The reasons actually recorded and as set out by the officer in the counter affidavit are such that even after close scrutiny they do not establish even prima facie a failure on the part of the assessee to fully and truly disclose the material facts for the assessment.

7. The above referred decision applies with full force to the case on hand and going by the records placed before this Court, it is evidently clear that there is no allegation against the petitioner to make full and true disclosure of material facts necessary for the assessment. Thus, I am of the clear view that the impugned reopening of the assessment is unsustainable in law and it is a clear case of change of opinion as the respondent has miserably failed to point out as to what is the reason to believe that any income chargeable to tax has escaped assessment. Thus it is a case where on suspicion the impugned reopening proceedings have been initiated. At the relevant point of time, the decision of the Hon'ble Division Bench Supreme Court in case of GKN DRIVE SHAFTS (259 ITR 19) was not rendered by the Hon'ble Supreme Court and therefore, the petitioner did not seek for furnishing the reason for reopening which resulted in passing of the impugned assessment order. It is only thereafter, the petitioner sought for the reasons and the present writ petition has been filed.

8. In the light of the above discussion, the petitioner is entitled to succeed in the writ petition. Accordingly, the writ petition is allowed and the notice issued for reopening the assessment and consequent assessment order dated 30.03.2004 are quashed. Consequently, the connected Miscellaneous Petition is closed. No Cost.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

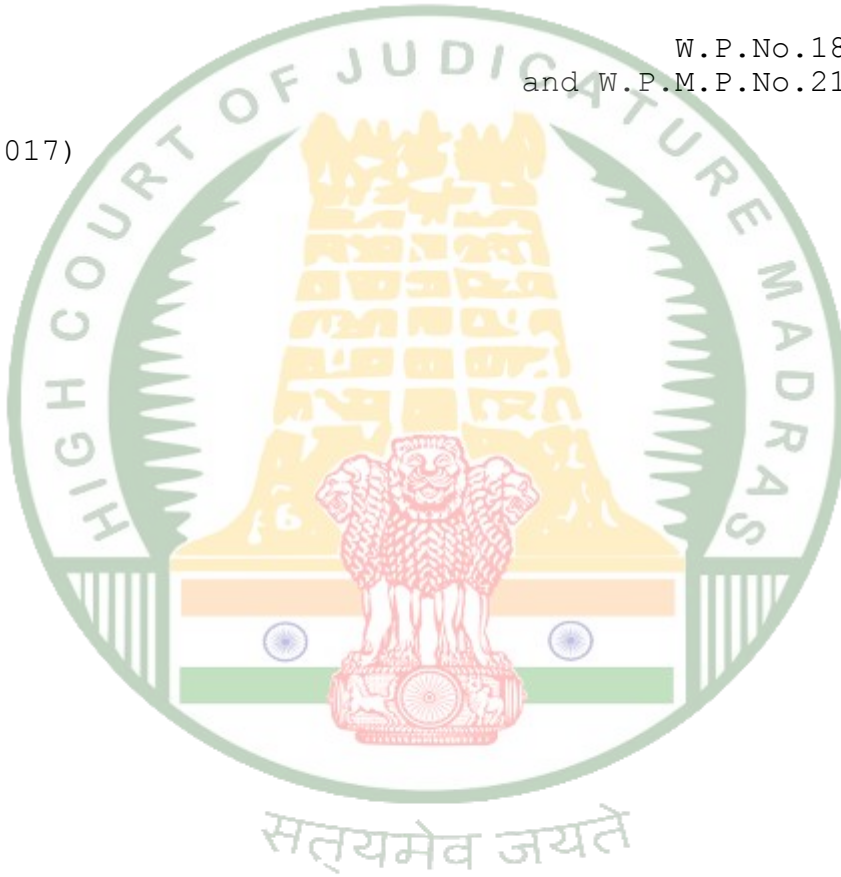
The Deputy Commissioner of Income-tax,
Company Circle-I, Madurai - 625 002.

+2cc to Mr.R.SRINIVASAN Advocate, S.R.No. 73456

+1cc to Mr.A.P.SRINIVAS Advocate, S.R.No. 73472

RSI (CO)
TR(22/11/2017)

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