IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 02.11.2018

CORAM:

THE HONOURABLE MRS.JUSTICE V. BHAVANI SUBBAROYAN

W.P.No.20054 of 2008
and
M.P.No. 1 of 2008

M/s.TCV Engineering Ltd.,
Represented by its Director, C.Mohan
No.25, 1st Street
Parameswari Nagar,
Adayar, Chennai-600 020. .. Petitioner

Vs.

The Deputy Commissioner of Income Tax,
Central Circle II (2),
New No.46 (Old No.108),
Mahatma Gandhi Road,
Nungambakam,
Chennai-600 034. .. Respondent

Prayer:- Writ Petition has been filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorari, to call for the proceedings in PAN:AAACT 2709E dated 16.07.2008 of the respondent relating to the block period 1987-88 to 1997-98 and quash the same.

For Petitioner : Mr.M.P.Senthilkumar
for Mr.I.Dinesh
for Mr.M.Muthukumar

For Respondent : Mr.Jayaprathap

ORDER

The present writ petition has been filed by the petitioner praying to quash the proceedings in PAN:AAACT 2709E dated 16.07.2008 of the respondent relating to the block period 1987-88 to 1997-98.

2.M/s.TCV Engineering Limited is the petitioner before this Court and is represented by its Director who claims that the petitioner's limited company is an assessee under the Income Tax

Act who was issued the notice u/s 158 BD of the Income Tax Act calling upon the petitioner to submit a return of undisclosed income for the period from 01.04.1986 to 15.07.1996. The petitioner claims that the above said notice was issued pursuant to an action u/s 132A of the Income Tax Act in the case of T.T.V.Dinakaran, who is the another Director of the petitioner company.

3.The learned counsel for the petitioner would submit that immediately after the receipt of the aforesaid notice, the petitioner's company submitted a return undisclosed income of Rs.1,41,04,160/-. However, the assessing authority after completion of the assessment determined Rs.2,96,88,746/- as undisclosed income of the petitioner's company by including a sum of R.42,37,323/-. This addition was made on the basis of certain sheets of paper alleged to have been recovered by the department in the course of a search in the premises of Sengamala Thayar Educational Trust.

4.The petitioner alleged that the above assessment was made without giving an opportunity and the petitioner has challenged the assessment order as invalid by way of an appeal before the Income Tax Appellate Tribunal and the Tribunal by its order dated 28.11.2002, held that the assessment of the aforesaid sum of Rs.42,37,323/- cannot be sustained as the said assessment was made without affording the petitioner an opportunity and the Tribunal set aside the assessment and remanded the matter back to the Assessing Authority. Thereafter, the Assessing Authority made a fresh assessment. It is alleged that the assessment was once again putting the petitioner with no notice of the materials sought to be relied on by the Assessing Authority.

5.The petitioner would further contend that the assessment was set aside in full. The petitioner bonafidely believed that all the contentions that are open to the petitioner could be urged before the Assessing Authority. The petitioner would further allege that despite there being direction by the Income Tax Appellate Tribunal by order dated 28.11.2002, the Assessing Authority made a further order dated 17.03.2004 u/s 158 BD read with u/s 158 BC of the Income Tax Act without affording an opportunity to the petitioner.

6.The petitioner once again challenged the said order before the Income Tax Appellate Tribunal. The petitioner would contend that, the assessment order is without jurisdiction and consequently the assessment has to be set aside. The Income Tax Appellate Tribunal had disposed of the said appeal by order dated 17.10.2007 holding that the assessment order has been made in violation of the principles of natural justice. However, the Tribunal has further held that, the Assessing Authority can proceed in accordance with law pursuant to the same, the Assessing Authority issued a notice u/s 158 BD of the Income Tax Act proposing to make an assessment for the block period from 1987-88 to 1997-98 by assessment PAN:AAACT 2709E dated 16.07.2008, which is impugned in this writ petition. The petitioner's counsel would further content that the question of jurisdiction of the Assessing Authority was not permitted to be raised by the Assessing Authority. The assessment should have been completed within a period of limitation prescribed u/s 158 BE (1) which provides for the extension of the limitation in certain specified circumstances, which the Assessing Authority failed to consider and the assessment is being bared by limitation.

7.The counter affidavit has been filed on behalf of the respondent and they have alleged that initially the assessment u/s 158 BD read with Section 254 was completed as earlier as 17.03.2004 with regard to unexplained investment in immovable properties of the assessee on the basis of certain seized materials assessed. Accordingly, the assessee was informed by the valid notice issued u/s 158 BD of the Income Tax Act which the assessee challenged before the Tribunal for want of opportunity. Initially, the Tribunal had set aside the assessment and remanded the matter back to the Assessing Officer for fresh assessment; based on which, final assessment was made after making an opportunity. The said assessment order was also challenged once again before the Tribunal. The Tribunal, by order dated 17.10.2007 has held that the penalty is levied on the basis of the addition made by the Assessing Officer in regard to the alleged payment made by the assesee to Shri.Selvam. In the quantum appeal ITA No.627/Mds/2002 the matter was restored to the file of the Assessing Officer for fresh adjudication, by which the Assessing Officer is at liberty to initiate penalty proceedings on the basis of the findings recorded in the fresh assessment order.

8.Thereafter, the Assessing Officer has issued a notice dated 10.06.2008, pertaining to the block period 1987-88 to 1997-98 and posted the hearing on 19.06.2008 for consideration. After hearing the arguments on behalf of the petitioner and respondent, by order dated 16.07.2008, the petitioner was directed to furnish the details with regard to the property transaction involved during the Block Period and the matter was reposted for hearing on 04.08.2008, which order has been challenged in this Court by the petitioner. As it is merely a request made to the petitioner to furnish the details regarding the property transaction during the block period, the petitioner ought to have furnished the details of the transaction and the assessment well within the limitation period. Hence, prayed for dismissal of the writ petition.

9.Heard, the learned counsel for the petitioner and the learned counsel for the respondent and perused the materials on record.

10.The learned counsel appearing for the petitioner vehemently argue that the assessment order, which is being impugned is beyond the period of limitation provided u/s 158 BD of the Income Tax Act and the authority had no jurisdiction to issue such assessment as Tribunal has set aside the assessment order challenged by the petitioner.

11.Per contra, the learned standing counsel for the Income Tax Department would argue for sustaining the impugned order, that the impugned order is only an order requesting the petitioner to produce the details regarding the property transaction held during the block period 1987-88 to 1997-98. Apart from that, it is also contended by the learned standing counsel for the Income Tax Department that the assessment order is well within the period of limitation.

12.On perusal of the entire materials on records and on a careful reading of the impugned order, it is clear that by virtue of earlier orders passed by the Tribunal especially the order dated 17.10.2007, wherein which the petitioner has filed the appeal before the Income Tax Appellate Tribunal Bench 'C' challenging the order dated 17.03.2004 passed by the Deputy Commissioner of Income Tax, Central Circle II (2) Chennai relating to the block assessment years 1987-88 to 1997-98, on the ground that, the order purported to be issued u/s 158 BD of the Income Tax Act 1961 is violative of principles of natural justice and as much as the assessee was not provided with reasonable opportunity of being heard. The authorities, before the Tribunal, relied upon the relevant block period wherein which the assessee acquired vacant lands through 6 sale deeds executed on different dates on various other papers that have been seized by the Assessing Officer, based on which, separate notices have been issued. However, no opportunity was offered thereby, the Tribunal allowed the appeal filed by the assessee in ITA(SS)A No.47/Mds/2004 thereby setting aside the impugned order and restored the same on the file of the Assessing Officer with the direction to decide the issues afresh in accordance with law after providing adequate opportunity to the assessee of being heard.

13.Insofar as the another appeal in ITA No.627/Mds/2002 is concerned the appeal was filed as against the order passed by the Commissioner (appeals) of Police, Chennai relating to an order dated 28.02.2002, which was challenged before the Tribunal, on the ground that no proper service was made on the assessee and in fact before the Tribunal it was assured that if an opportunity was given, the assessee can produce before the Assessing Officer the relevant materials for necessary examination and to explain the veracity of the said transaction.

14.The Tribunal, after hearing the appeals, has restored the ITA No.627/Mds/2002 for fresh adjudication by conferring the liberty to the Assessing Officer to initiate the penalty proceedings on the basis of the findings recorded in the fresh assessment order. Based on the above directions, wherein which the order of the Appellate Tribunal was not challenged by the petitioner herein before the higher forum, the Assessing Officer has issued a notice dated 10.06.2008 informing the petitioner fixing the hearing date as 19.06.2008 for considering the issue relating to block assessment as well as the assessment year 1998-99.

15.It is further seen from the records that, the petitioner has appeared before the Deputy Commissioner of Income Tax/respondent and raised the question of jurisdiction and the assessment order being issued beyond the period of limitation. The respondent herein has negatived the issue of jurisdiction as same was not raised any where before in any of the proceedings involving the block assessment proceedings of block period 1987-88 to 1997-98 and directed the petitioner to appear for the further hearing on 04.06.2008 and furnish the details with regard to the property transaction. It is clear from the impugned order that the respondent is not correct in baring the petitioner to raise jurisdiction issue as it was raised only for the 1st occasion before the respondent and not in the previous assessment orders. An order passed by the authority, who had no jurisdiction to pass such order, can have no legal enforcement and the question of jurisdiction can always be raised during the currency of the proceedings. As the Income Tax Appellate Tribunal, while restoring the matter back to the respondent, the parties were at liberty to raise the question of jurisdiction. The assessee can be curtained of the right to question the jurisdiction of the authority merely because the assessee had failed to raise the same before in the earlier proceedings, but the matter is restored back to the respondent. The respondent can issue fresh notice and in those circumstances, the assessee can raise the issue of jurisdiction before the authority.

16.Under these circumstances, the contention raised by the respondent as far as the jurisdiction that the jurisdiction issue was not raised before the Appellate Authority and the same cannot be raised before this Court alone is set aside and the matter is directed to be proceeded further from where it is stopped that is questioning the petitioner to furnish the details with regard to the property transactions and the petitioner is bound to produce details, as the petitioner has not challenged the order of the Appellate Tribunal dated 17.10.2007 which has become final and the further proceedings based on the order of the Appellate Tribunal has been commenced by the respondent.

17.Since the issue is pending before the respondent for more than twenty years, the respondent is directed to complete the proceedings within a period of 3 months from the date of receipt of copy of the order by affording sufficient opportunity to the petitioner, on day-to-day basis, to which the petitioner and the respondent shall co-operate.

18.The Writ petition is disposed of, with the above directions. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Deputy Commissioner of Income Tax,
Central Circle II (2),
New No.46 (Old No.108),
Mahatma Gandhi Road,
Nungambakam,
Chennai-600 034.

+1cc to Mr.M.Muthukumar, Advocate sr.no.76206
+1cc to M/s.A.P.Srinivas, Advocate sr.no.76178

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nr 28/02/2019