IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2018

CORAM

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

W.P.Nos.33917 to 33920 of 2017
&
W.M.P.Nos.37620 to 37623 of 2017

K.Velayutham ... Petitioner in all Writ Petitions

Vs.

The Assistant Commissioner of Income Tax
Non Corporate Circle 15(1)
Room No.208, 2nd Floor, Wanaparthy Block
No.121, MG Road, Nungambakkam
Chennai- 600 034 ...Respondent in all Writ Petitions

Prayer: Writ Petitions filed under Article 226 of Constitution of India, to issue a Writ of Certiorari to call for the records pertaining to the Notice under Section 148 dated 21.02.2017 in PAN AEMPV6412K/ACIT/NCC-15/A4-2010-11, A4-2011-12, A4-2012-13, A4-2013-14 and the Corrigendum dated 31/03/2017 in PAN AEMPV6412K/ 2010-11, 2011-12, 2012-13, 2013-14 issued by the Rspondent and quash the same as illegal.

For Petitioner : Mr.K.Ravi
For Respondents : Mr.A.P.Srinivas & Mr.A.N.R.Jayaprathap

ORDER

Heard Mr.K.Ravi, learned counsel for the petitioner and Mr.A.P.Srinivas, learned senior standing counsel appearing for the respondent.

2.The petitioner has filed these writ petitions challenging the notices issued by the respondent under Section 148 of the Income Tax Act, 1961 and the corrigendum dated 31.03.2017. The first ground raised by the petitioner challenging the impugned notice is by contending that the respondent has not followed the procedure stipulated by the Hon'ble Supreme Court in GKN Driveshafts (India) Ltd., Vs.Income Tax Officer and Ors. reported in (2003) 259 ITR 59 (SC) as the respondent has not passed a speaking order, after the petitioner had filed their objections dated 11.12.2017 to the re-opening proceedings. In the objection filed by the petitioner, the petitioner pointed out that it is not permissible to take the sworn statement in action under Section 133 A of the Act as it does not have evidentiary value.

3. The learned counsel for the petitioner referred to a decision of this Court in the case of M/s.India Electronics Vs. The Joint Commissioner of Income Tax, Range II, Cuddalore and another in W.P.No.8569 of 2006 dated 09.01.2018, where one of the question which came up for consideration was the effect of statement recorded during the course of survey action under Section 133 A of the Act. The Court took note of the decision of the High Court of Allahabad in the case of Dr.S.C.Gupta Vs. Commissioner of Income Tax reported in (2001) 248 ITR 782, which was considered by the Division Bench of this Court in Commissioner of Income Tax Vs. S.Khader Khan Son reported in (2008) 300 ITR 157 (Mad) and pointed out that the statement recorded during the course of survey action under Section 133 A of the Act shall not have any evidentiary value and solely based on the said statement by one of the partners of the firm, the question of reopening cannot be done. Similar view was taken by the High Court of Kerala in Paul Mathews and Sons Vs. CIT reported in (2003) 263 ITR 101.

4. Learned counsel for the respondent sought to sustain the re-opening by referring to the averments set out in the counter affidavit filed by the respondent.

5. In my considered view, the necessity to go into the merits of the case does not arise at this juncture on account of lapses committed by the respondent in not observing the directives issued by the Supreme Court in GKN Driveshafts (India) Ltd. (cited supra).

6. Thus, for the above reasons, the respondent is directed to consider the petitioner's objection dated 11.12.2017, refer to the decisions which have been relied on by the petitioner referred to supra and pass a speaking order on merits and in accordance with law. Till such orders are passed further proceedings pursuant to the notice dated 15.12.2017 shall be kept in abeyance.

The writ petitions are disposed of with the above direction. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True copy//

Sub Assistant Registrar

To

The Assistant Commissioner of Income Tax
Non Corporate Circle 15(1)
Room No.208, 2nd Floor, Wanaparthy Block
No.121, MG Road, Nungambakkam
Chennai- 600 034.

+1cc to Mr.A.P.Srinivas, Advocate SR.No.37085
+1cc to Mr.K.Ravi, Advocate SR.No.37210

W.P.Nos.33917 to 33920 of 2017 &
W.M.P.Nos.37620 to 37623 of 2017

SV(CO)
GN(25/06/2018)