In the High Court of Judicature at Madras

Dated : 29.1.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.27598 of 2008 & MP.No.1 of 2008

T.V.Mylsamy ... Petitioner

Vs

1.The Deputy Commissioner of
Income Tax, Central Circle-II,
63, Race Course Road,
Coimbatore-18.

2.The Assistant Commissioner of
Income Tax, Central Circle-II,
63, Race Course Road,
Coimbatore-18. ...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records in PAN : AGPPM 2486B dated 19.3.2008 on the file of the second respondent as modified by the proceedings in PAN : AGPPM 2486B dated 12.8.2008 on the file of the first respondent relating to the assessment year 2002-03 and quash the same.

For Petitioner : Mr.M.P.Senthil Kumar

For Respondents : Mr.A.N.R.Jayapratap

ORDER

Heard both.

2. The petitioner has challenged a notice issued by the second respondent dated 19.3.2008 under Section 148 of the Income Tax Act, 1961 stating that he had reason to believe that the petitioner's income, which was assessable and chargeable to tax for the assessment year 2002-03, escaped assessment within the meaning of Section 147 of the said Act. Therefore, the second respondent proposed to assess/re-assess the income, recompute the loss/depreciation allowance for the relevant assessment year and called upon the petitioner to file their returns within 30 days from the date of service of the said notice.

3. The learned counsel for the petitioner submits that the inherent defect, which has been committed by the first respondent, is that the reasons for reopening were not furnished to the petitioner despite making a request by letter dated 13.11.2008.

4. However, this Court finds that in the interregnum i.e. after the impugned notice has been issued, there has been some correspondence between the petitioner and the Department. The petitioner appears to have acquired some knowledge, though not officially, as to what could have been the reasons for reopening, which prompted the petitioner to send the letter dated 06.6.2008 objecting to the reopening proceedings. In response to the said letter, the first respondent sent a reply dated 12.8.2008 calling upon the petitioner to file their return of income.

5. Once again, another letter of the even date was sent by the first respondent to the petitioner calling upon the objections for the proposal under Section 144 of the said Act for the assessment year 2002-03. Only at that point of time, the petitioner realized that he requires reasons for reopening. Therefore, the petitioner sent the letter dated 13.11.2008 objecting to the proposal, requesting to complete the re-assessment under Section 144 of the said Act and submitting that the returns filed on 07.1.2003 may be treated as a response to the notice under Section 148 of the said Act for the assessment year 2002-03 and simultaneously requested to furnish the reasons for reopening the assessment.

6. The Revenue sought to support their stand by filing a counter thereby submitting that the petitioner has already submitted their returns dated 07.1.2003, which were dealt with and a reply was given to the petitioner and at that stage, the challenge to the impugned notice under Section 148 of the said Act cannot be entertained.

7. The mandate, as laid down by the Hon'ble Supreme Court in the case of GKM Driveshafts (India) Ltd. Vs. ITO [reported in (2003) 259 ITR 19], requires that when an assessee seeks reasons for reopening the assessment, the Assessing Officer is bound to furnish the same. On receipt of the reasons, the assessee is entitled to submit their objections, which should be considered and a speaking order should be passed. The reasons cannot be inferred from the reply given by the Assessing Officer dated 12.8.2008. The reasons for reopening should find a place in the files of the Assessing Officer for the relevant assessment year and those reasons need to be communicated to the assessee so as to enable them to file their objections to the reopening

proceedings. Therefore, this Court is of the considered view that the reply sent by the Assessing Officer on 12.8.2008 is of little avail. Even assuming that the assessee had partial knowledge of the reasons for reopening the assessment, that would not be sufficient compliance of the mandate in the light of the decision in the case of GKN Driveshafts (India) Ltd.

8. Accordingly, the writ petition is disposed of with the following directions :

(i) The first respondent shall consider the request of the petitioner for furnishing the reasons for reopening the assessment for the year 2002-03 within a period of 15 days from the date of receipt of a copy of this order.

(ii) On furnishing of such reasons for reopening, the petitioner is directed to file their objections/reply, within 30 days thereafter, after which, the first respondent shall consider and redo the assessment by following the mandate laid down in GKN Driveshafts (India) Ltd.

(iii) It is made clear that neither party shall take advantage of the fact that the writ petition has been pending from 2008 onwards till date. It is needless to state that it is open to the assessee to raise all the grounds while submitting their objections to the reasons for reopening the assessment on being furnished by the Assessing Officer.

No costs. Consequently, the connected MP is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Deputy Commissioner of Income Tax, Central Circle-II, 63, Race Course Road, Coimbatore-18.

2.The Assistant Commissioner of Income Tax, Central Circle-II,63 Race Course Road, Coimbatore-18.

+1cc to Mr.N.Muthukumar, Advocate, S.R.No.6865

+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.6433

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RRK(13/02/2018)