IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

WP Nos.938 & 941 of 2019
and
WMP.Nos.1051 of 2019

M/s.Hanon Automotive Systems India Private Limited
(previously known as
M/s.Visteon Automotive Systems India Pvt. Ltd.)
Represented by its Authorised Signatory
Mr.B.Swaminathan
Keelakaranai Village, Malrosapuram Post
Maraimalai Nagar, Chengalpattu - 603 204. ...Petitioner
(in both WPs)

vs.

1. The Deputy Commissioner of Income Tax
   Corporate Circle-2(2)
   Room No.512, 5th Floor
   Wanarpathy Block, Aayakar Bhavan
   121, M.G.Road, Nungambakkam
   Chennai-600 034.

2. The Principal Commissioner of Income Tax-2
   121, M.G.Road, Nungambakkam
   Chennai-600 034. ...Respondents
(in both WPs)

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records on the file of the first respondent and quash the impugned notice in PAN:AAACM6890R, in notice number ITBA/AST/S/148/2017-18 dated 23 March 2018 issued under Section 148 of the Income Tax Act for the assessment year 2011-2012.

W.P.NO.941 OF 2019: Writ of Certiorari to call for the records on the file of the First Respondent and quash the impugned order in PAN:AAACM6890R dated 7th December 2018, passed under Section 143(3) r/w section 147 of Income Tax Act the Assessment year 2011-2012.

For Petitioner	:	Mr.N.V.Balaji (in both WPs)
For Respondents	:	Mrs.Hema Muralikrishnan Senior standing counsel (in both WPs)

C O M M O N   O R D E R

Mrs.Hema Muralikrishnan, learned standing counsel takes notice for the respondents. By consent of the parties, the main writ petition is taken up for final disposal at the admission stage itself.

2. WP.No.938 of 2019 is filed against the notice issued under Section 148 of the Income Tax Act, 1961, dated 23.03.2018, relevant to assessment year 2011-2012. WP.No.941 of 2019 is filed against the order of assessment dated 07.12.2018 passed under Section 143(3) r/w 147 of the Income Tax Act, relevant to assessment year 2011-2012.

3. Heard Mr.N.V.Balaji, learned counsel for the petitioner and Mrs.Hema Muralikrishnan, learned standing counsel for the respondents.

4. The learned counsel for the petitioner submitted that the reasons for re-opening the assessment cannot be sustained, since the materials relied on by the Assessing Officer for re-opening the assessment are the materials already available on record during the original assessment proceedings and therefore, based on such materials and by changing his opinion, the Assessing Officer is not entitled to re-open the assessment. Therefore, the learned counsel contended that the re-opening proceedings as well as the consequential assessment order are liable to be set aside.

5. On the other hand, the learned standing counsel for the respondents submitted that when the reasons for re-opening the assessment were furnished to the petitioner, they have not chosen to file the objections to the reasons and therefore, the Assessing Officer has rightly passed the consequential assessment order. Thus, she contended that if the petitioner wants to canvass the merits of the assessment, it should be done by way of filing a regular statutory appeal and not by way of filing the present writ petition.

6. Heard both sides.

7. It is seen that the notice under Section 148 of the IT Act, 1961, dated 23.03.2018, impugned in WP.No.938 of 2019, was issued to the petitioner for re-opening the assessment relevant to assessment year 2011-2012. It is further seen that the

petitioner by way of their communication dated 25.04.2018, requested the Assessing Officer to provide the reasons for re-opening the assessment. Consequently, the Assessing Officer furnished those reasons through their communication dated 10.10.2018. Even though such communication intimating the reasons for re-opening was received by the assessee, admittedly, they have not chosen to file any objections before the Assessing Officer. Needless to say that when no objection is received from the assessee, on the reasons set out for re-opening the assessment, the Assessing Officer cannot be found fault with in passing the consequential assessment order dated 07.12.2018 under Section 143(3) r/w 147 of the IT Act,1961. This is what happened in the present case. Therefore, the petitioner having not filed the objections before the Assessing Officer against the reasons stated for re-opening, is not entitled to question about the re-opening before this Court by way of filing the present writ petition. On the other hand, it is for the assessee/petitioner to file a regular statutory appeal before the First Appellate Authority, as this Court is not inclined to entertain this writ petition only on the above stated reasons. The other contentions raised on merits of the assessment are not considered by this Court by expressing any view.

8. Accordingly, both these writ petitions are disposed of, by granting liberty to the petitioner to file a statutory appeal before the Appellate Authority by raising all the contentions within a period of four weeks from the date of receipt of a copy of this order. If any such appeal is filed, by complying with all other statutory requirements, the Appellate Authority shall consider and dispose the same on merits and in accordance with law, without reference to the period of limitation. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

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To

1. The Deputy Commissioner of Income Tax
Corporate Circle-2(2)
Room No.512, 5th Floor
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121, M.G.Road, Nungambakkam
Chennai-600 034.

2. The Principal Commissioner of Income Tax-2
121, M.G.Road, Nungambakkam
Chennai-600 034.

+2cc to Mr.N.V.Balaji, Advocate, S.R.No. 3437
+1cc to Mr.Hema Murali Krishnan, Advocate, S.R.No. 3532

WP Nos.938 & 941 of 2019

CA(CO)
GN(05/02/2019)