IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 01.10.2019

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.Nos.1923 and 1927 of 2019
and
W.M.P.Nos.2134 and 2139 of 2019

M/s.GE T&D India Limited,
(Formerly known as Alstom T&D India Limited)
Rep. by its authorized signatory,
Sivaramakrishnan Sundararaman,
19/1, IOC Building,
GST Road, Pallavaram,
Chennai 600 043.

...Petitioner
in both W.Ps.

Vs.

Assistant Commissioner of Income Tax,
Large Tax Payer Unit-1,
7th Floor, New Block,
121, Mahatma Gandhi Road,
Chennai 600 034.

...Respondent
in both W.Ps.

PRAYER in W.P.No.1923 of 2019:Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of certiorari to call for the records on the file of the respondent and quash the impugned order bearing No.ITBA/AST/S/148/2017-18/1009602304(1) dated 31.03.2018 under Section 148 of the Income Tax Act, 1961 for the assessment year 2011-12.

PRAYER in W.P.No.1927 of 2019:Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of certiorari to call for the records on the file of the respondent and quash the impugned order in PAN No.AAACG2115R dated 29.11.2018 passed under Section 143(3) read with Section 147 of the Income Tax Act, 1961 for the assessment year 2011-12.

For Petitioner in both W.Ps. : Mr.N.V.Balaji

For Respondent in both W.Ps. : Mrs.Hema Muralikrishnan
Senior Standing Counsel (I.T)

C O M M O N   O R D E R

W.P.No.1923 of 2019 is filed against notice issued under Section 148 of the Income Tax Act, 1961 dated 31.03.2018 for the relevant assessment year 2011-2012.

2.W.P.No.1927 of 2019 is filed against the order of assessment dated 29.11.2018 passed under Section 143(3) read with Section 147 of the Income Tax Act, 1961 for the relevant assessment year 2011-12.

3. The common facts and circumstances in both these writ petitions, as projected by the petitioner, are as follows:

The petitioner is a Company incorporated on 13.03.1957 engaged in the manufacture of heavy electrical equipment. M/s.Areva T&D Instrument Transformers Private Limited (AITPL) was amalgamated with the petitioner with effect from 01.01.2006 vide a Scheme of Amalgamation, which was approved by the Hon'ble Delhi High Court by order dated 14.08.2007. For the assessment year 2011-12, the Return of income filed by the petitioner was selected for scrutiny and order under Section 143(3) read with Section 92 CA of the Act was passed after making disallowances. The assessment proceedings were completed based on full and true disclosure of all relevant details. Thereafter, the respondent issued the impugned notice under Section 148 of the Act on 31.03.2018, alleging that the income has escaped assessment. The petitioner vide letter dated 09.05.2018 filed return of income in response to the impugned notice and sought a copy of the reasons recorded for reopening the assessment. The respondent issued the reasons vide letter dated 06.07.2018. According to the respondent, the petitioner has made certain transactions in the PAN of amalgamating Company [M/s.Areva T&D Instrument Transformers Private Limited (AITPL)] for the assessment year 2011-12 and thus, there was reason to believe income chargeable to tax has escapped assessment. The respondent reopened the assessment merely based on suspicion and not based on any tangible material on record. The respondent also vaguely stated that the petitioner has undertaken some transactions without mentioning the nature/parties to the transactions. The respondent failed to share the details despite specific request made by the petitioner through their letters dated 29.08.2018 and 17.09.2018. Without even waiting for the petitioner to file its objections to the reasons for reopening, the respondent issued notice under Section 143(2) dated 21.08.2018 and thereafter, passed the impugned order of assessment under Section 143(3) read with Section 147 dated

29.11.2018. Therefore, the entire assessment proceedings is vitiated as the same was passed against the principles of equity and natural justice. The respondent failed to follow the procedure laid down by the Apex Court in GKN Driveshafts (India) Ltd., Vs. Income Tax Officer, reported in (2003) 259 ITR 19.

4. The respondent filed two separate counter affidavits. The crux of the contentions raised therein is as follows:

In view of the fact that notice under Section 148 has already culminated into the order of assessment dated 31.12.2018, W.P.No.1923 of 2019 is liable to be dismissed as infructuous. As against the order dated 31.12.2018, the petitioner has an effective and efficacious statutory appellate remedy. The respondent has clear reasons to believe that the income of the assessee has escaped assessment within the meaning of Section 147 and thus, a notice under Section 148 was issued with the approval of the Commissioner of Income Tax. The respondent communicated the reasons for reopening the assessment by clearly stating that the assessee had made transactions in the PAN of the amalgamating Company (M/s.Areva T&D Instrument Transformers Private Limited) for the assessment year 2011-12, as stated in the communication dated 06.07.2018. The narration and the tabular column shown in letter dated 06.07.2018 giving reasons, would clearly show that the assessee had made transaction in the name and PAN number of the erstwhile company even after amalgamation and these details were not provided by the petitioner during the time of the original assessment proceedings. Notice under Section 143(2) was issued on 21.08.2018 nearly after 45 days from the date of issuance of reasons for reopening on 06.07.2018. Therefore, the petitioner is not justified in contending that the respondent has not followed the mandate of the Supreme Court in the case of GKN Driveshafts (India) Ltd. The petitioner failed to file objections for reopening the assessment. Therefore, the presumption is that the petitioner does not have objection to the reopening. Hence the respondent proceeded to next step in the process of reopening and passed the impugned order of assessment.

5. Mr.N.V.Balaji, learned counsel for the petitioner submitted that there is a clear failure on the part of the respondent to follow the principles laid down in GKN Driveshafts (India) Ltd. case. He further submitted that the reasons assigned are bereft of material details and therefore, without furnishing those material details, as sought for by the petitioner through their communication dated 29.08.2018 and 17.09.2018, the Assessing Officer is not justified in passing the impugned order of assessment. It is his further contention

that only when those details are furnished, the petitioner would be in a position to file an effective objection to the reasons for reopening. He further contended that apart from the above contention on the question of violation of the principles of natural justice, the form 26AS information is already available on record with the Assessing Officer and therefore, the transactions referred in the reasons for reopening based on those Form 26AS information, are not the new or tangible material available to the Assessing Officer to reopen the assessment, that too, after a period of four years. Therefore, he contended that even on the ground of limitation, the reopening and consequential assessment have to go.

6.On the other hand, Mrs.Hema Muralikrishnan, the learned Senior Standing Counsel for the Revenue contended that the petitioner failed to give any objection of the reasons for reopening within 45 days of furnishing the reasons and therefore, the Assessing Officer has rightly proceeded to issue notice under Section 143(2) on 21.08.2018 and further proceeded to pass the assessment order on 29.11.2918. It is also contended by her that the reasons furnished on 06.07.2018 itself contains the material information and therefore, the petitioner is not prevented from making an objection within time.

7. Heard both sides and perused the materials placed before this Court.

8. The petitioner is aggrieved against the reopening of the assessment and the consequential order of assessment. It is seen that the petitioner Company was incorporated on 13.03.1957 and another Company viz., M/s.Areva T&D Instrument Transformers Private Limited was amalgamated with the petitioner company with effect from 01.01.2006. It is seen that already assessment proceedings were completed by the respondent in respect of the relevant assessment year 2011-12 and however, the respondent subsequently issued a notice under Section 148 on 31.03.2018, for reopening by alleging that the income has escaped assessment. It is further seen that on receipt of such notice, apart from filing the returns, the petitioner has also sought for furnishing the reasons, through their communication dated 09.05.2018. The respondent through proceedings dated 06.07.2018 furnished the reasons for reopening, as follows:

> "With reference to the above, the reasons for initiation of proceedings u/s.147 of the IT Act, 1961 for AY 2011-2012 are given below.
>
> "On perusal, M/s.Areva T & D Instrument Transformers Private Limited (PAN:AACCA8622R) has been amalgamated w.e.f 01.01.2016 with M/s.Areva T & D

India Limited now name changed as GE T & D India Limited whose PAN is AAACG2115R. After amalgamation, the company has made transaction in the PAN of amalgamated company M/s.Areva T & D Instrument Transformers Private Limited for the AY 2011-2012 (FY 2010-2011) as under:-

S. No.	FY	Information Code	Information Description	TDS deducted	TDS deposited
1	2010-2011	TDS-94J	Rs.5,19,146/- fees for professional or technical services (Section 194)	61,925/-	61,925/-
2	2010-2011	TDS-94C	Rs.3,64,41,881/- payment to contractors (Section 194C)	7,28,837/-	7,28,837/-
3	2010-2011	TDS-94C	Rs.5,77,402/- payment to interest other than interest on securities (Section 194A)	58,634/-	58,634/-

M/s.GE T & D India Limited has made some transactions in the PAN of the amalgamated company after 5 years of amalgamation.

In view of the above, I have reason to believe that income chargeable to tax has escaped assessment and accordingly, the assessment needs to be reopened u/s.147 of the IT Act, 1961.""

9. The petitioner, no doubt, has not filed their objections immediately and on the other hand, through their communication dated 29.08.2018 and 17.09.2018, addressed to the respondent, requested to share the partywise details of transactions referred to in the communication dated 06.07.2018 so that they can reconcile the same and submit their objections against the reopening. It is specifically stated by the petitioner in those two letters that only the cumulative transaction details under each of the section were mentioned and partywise details are not made available to them and therefore, they are constrained from reconciling the reasons with their books of accounts. In their communication dated 17.09.2018, the petitioner has specifically

stated that Companies got amalgamated five years back and the petitioner Company has not made transaction in the name of erstwhile company and that the petitioner Company does not have access to e-filing/TRACES portal of AITPL, since the PAN of the erstwhile company is not surviving as on date. Therefore, it is stated by the petitioner that in the absence of access to e-filing/TRACES portal, the petitioner Company is not in a position to download the details of Form 26AS, which is the document that would reflect the partywise details of TDS credit to their account. Therefore, the petitioner contended that in the absence of partywise transaction details, they are not in a position to reconcile their records and consequently they are constrained from filing an objection against reopening of the assessment.

10. It is not in dispute that these two communications received, however, were not considered by the Assessing Officer before passing the order of assessment. No doubt, that even before issuance of the above two communications, the Assessing Officer has already issued notice under Section 143(2) on 21.08.2019. But the fact remains that the consequent assessment order was passed only after receipt of those two communications.

11. As rightly pointed out by the learned counsel for the petitioner, I find that the communication of the reasons, of course with a tabular column, is however, bereft of material details with regard to the partywise transactions. The descriptive information provided in the reasons, in my considered view, is not so specific with partywise details and therefore, it is rightly contended by the petitioner that they were not in a position to file an effective objection against reopening of the assessment, as they were not in a position to reconcile their records. It is also stated that the petitioner Company is not in a position to download the details of Form 26AS in the absence of access to e-filing/TRACES portal, which document alone would reflect the partywise details. Therefore, it is necessary for the respondent to furnish those details to the assessee so as to enable them to file their objections in effective manner.

12. It is relevant to mention at this juncture that in GKN Driveshafts (India) Ltd. case, the Apex Court has laid down the principles as to how the reopening of the assessment should be proceeded with, commencing from the issuance of notice under Section 148 onwards. It is made clear therein that the reasons for reopening must be provided to the assessee, who in turn is entitled to make his objections on such reasonings and that the Assessing Officer has to pass a reasoned order on such

objections. In this case, I find that the Assessing Officer has proceeded to pass an order of assessment directly without following the procedures laid down in GKN Driveshafts (India) Ltd. case. It is true that the Assessing Officer has proceeded to issue 143(2) notice after waiting for sometime from the date of issuance of 148 notice. But at the same time, it is to be seen that before passing the impugned order of assessment, the above two communications of the petitioner were placed at the hands of the Assessing Officer. Therefore, in all fairness, the Assessing Officer should have given the material details, so as to enable the petitioner to file their objections and passed a speaking order on those objections thereafter.

13. In view of the fact that no such procedures are followed in this case, I am of the view that the impugned order of assessment dated 29.11.2018 cannot be sustained. Therefore, this Court is inclined to remit the matter back to the Assessing Officer for furnishing the details sought for by the petitioner through their communication dated 29.08.2018 and 17.09.2018 and thereafter to proceed in accordance with the procedure laid down in GKN Driveshafts (India) Ltd. case. Since this Court is inclined only to set aside the assessment order and remit the matter back to the Assessing Officer to exercise in the line of the observation made supra, the writ petition in W.P.No.1923 of 2019, challenging the notice under Section 148 is liable to be closed for the present, however, leaving all the issues raised by the petitioner therein open including the one, on limitation for adjudication in future, if it is so warranted, pursuant to the further proceedings to be issued by the Assessing Officer in the light of the order passed in these writ petitions.

14. Thus, W.P.No.1927 of 2019 is allowed and the impugned order of assessment dated 29.11.2018 is set aside and the matter is remitted back to the Assessing Officer with the following directions:

a) The Assessing Officer shall furnish the material details sought for by the petitioner through their communication dated 29.08.2018 and 17.09.2018, within a period of four weeks from the date of receipt of a copy of this order.

b) On receipt of such details, the petitioner shall file their objections within a period of two weeks thereafter;

c) On receipt of the objections from the petitioner, the Assessing Officer shall pass a speaking order on the objections so raised by the petitioner and communicate the same to the petitioner within a period of four weeks thereafter;

d) Based on the order to be passed by the Assessing Officer stated supra, it is open to the Assessing Officer to proceed further with, in the event of rejecting the objections raised by the petitioner.

15. Accordingly, W.P.No.1923 of 2019 is closed, in view of the order passed in W.P.No.1927 of 2019.

No costs. The connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

Assistant Commissioner of Income Tax,
Large Tax Payer Unit-1,
7th Floor, New Block,
121, Mahatma Gandhi Road,
Chennai 600 034.

+2cc to Mr.N.V.Balaji, Advocate sr.84279 & 84272
+1cc to Mrs.Hema Muralikrishnan, Advocate sr.84230

W.P.Nos.1923 and 1927 of 2019

spd(co)
nr 12/11/2019