IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.NO.37124 OF 2003
AND
W.M.P.NO.45056 OF 2003

East Coast Constructions and
Industries (Firm) (Erstwhile
Partnership by through its Partners)
"Bukharia Buildings"
No.4, Moores Road,
Chennai - 600 006.
Rep by its Former Partner,
K.T.M.Ahmed Mustafa ... Petitioner

Vs.

1. Commissioner of Income Tax,
   Chennai I (i/c),
   Room No.529, 5th Floor,
   New Block 121, Mahatma Gandhi Road,
   Chennai - 34.

2. The Deputy Commissioner of Income Tax,
   Special Range V,
   Chennai - 600 034.

3. Joint Commissioner of Income Tax,
   Special Range V,
   Chennai - 600 034. ... Respondents

Prayer:

Writ Petition is filed under article 226 of the Constitution of India, Writ of Certiorari, to call for the records in C.No.203/19/CIT-CH-I/2003-04, dated 02.12.2003 on the file of the 1st respondent.

For Petitioner : Mr.M.P.Senthilkumar
for N.Muthukumar

For Respondents : Mrs.Hema Muralikrishnan
Senior Standing Counsel

ORDER

Heard Mr.M.P.Senthilkumar for Mr.N.Muthukumar, learned counsel for the petitioner and Mrs.Hema Muralikrishnan, Senior Standing Counsel for the respondents.

2. The petitioner has challenged the impugned notice issued under Section 263 of the Income Tax Act. The invocation of the aforesaid provision of the Income Tax act, is pursuant to an internal order sheet dated 21.03.2002 of the concerned officer which reads as follows:-

> "Since both the points mentioned above have been duly considered in the assessment for the assessment year 1995-1996 the proceedings for this year are closed as NA."

3. It is the contention of the petitioner that the assessments were completed for the assessment year 1996-1997 on 23.04.1998 in the hands of the petitioner. Thereafter, a notice under Section 148 of the Income Tax Act, 1961 was issued to the petitioner on 19.12.2000. He submits that the decision to drop the aforesaid proceeding vide an internal order sheet dated 21.03.2002 was not communicated to the petitioner and therefore it was not an "order" for the purpose of invocation of the jurisdiction under Section 263 of the Income Tax Act, 1961. The learned counsel for the petitioner relied on the following decisions:

i)C.I.T vs.Carborandum Universal Ltd., (1998) 240 ITR (Mad)
ii)Carborandum Universal Ltd. Vs ITO (ITAT Mad)
iii)C.I.T. Vs C.R.K.Swamy (2002) 254 ITR 158 (Mad)
iv)C.I.T Vs Md.Meeran Shahul Hameed TCA.429 of 2019

4. It was further submitted that the impugned notice dated 2.12.2003 under Section 263 of the Income Tax Act, 1961 was clearly barred by limitation as the original order of assessment was made on 23.04.1998. The learned counsel for the petitioner submitted that the last date for invoking the jurisdiction under section 263 to revise an order of assessment after expiry of 2 years from the end of the financial year in which the orders sought to be devised was passed had expired. The learned counsel for the petitioner submits that the last date for invoking the jurisdiction under section 263 of the Income Tax Act, 1961 would have expired on 31/03/2001 and therefore

invocation of section 263 on 02.12.2003 was barred by law and therefore without jurisdiction.

5.Learned counsel for the petitioner further submits the issue as to whether there was capital gains in the hands of the petitioner firm on account of conversion of partnership concern into a company under the provisions of the Income Tax Act, 1961 was also no longer res integra in the light of the decision of the division bench of this court in Cadd Centre Versus AC IT (2016) 383 ITR 258 (Mad).

6.The learned counsel for the petitioner also relied on the following decisions to state that invocation of section 263 of the Income Tax Act, 1961 was without jurisdiction:-

i) Malabar Industrial Co., Ltd., vs.C.I.T (2000) 243 ITR 83 (SC)
ii)C.I.T. vs.Max India Ltd., (2007) 295 ITR 282 (SC)
iii)C.I.T. vs. Mepco Industries Ltd., (2007) 294 ITR 121 (Mad)
iv)C.I.T. vs.K.G.Denim Ltd., 180 Taxman 590 (Mad)
v)CIT vs. SAK Soft Ltd., (2008) 290 ITR 63 (Mad)
vi)PCIT vs.Abhijit Bhandari 414 ITR 485 (Mad)

7.Defending the impugned order, the learned counsel for the respondent submits that the invocation of section 263 of the Income Tax Act, 1961 was in time. She submits a decision taken on 21.03.2002 to drop the proceeding initiated pursuant to section 148 of the Income Tax Act, 1961 though not communicated was nevertheless an order and therefore there is no merits in the contention that the invocation of jurisdiction under section 263 of the Income Tax Act, 1961 was without jurisdiction. Further, the learned counsel submits that the invocation of section 263 of the Income Tax Act, 1961 was in time. She further submits the power to revise an order prejudicial to interest of revenue is available with the 1st respondent in respect of any proceedings under the Act and therefore the proceeding of the officer dated 31.03.2002 though not communicated earlier was amenable to revision under section 263 of the Act.

8.I have considered the submissions of the learned counsel for the petitioner and the respondent.

9.According to the petitioner also the issue squarely covered in their favour on merits. The decision to drop the proceeding has not been communicated to the petitioner. As long as such decision had remained in the files, invocation of jurisdiction under section 263 of the Income Tax Act, 1961 would have been premature. However, once the aforesaid decision is communicated and made known to the petitioner, such decision would be amenable to revision under section 263 of the Income Tax Act, 1961. In this case, the decision has been communicated. Therefore, I do not find any reasons to interfere at the stage. Therefore, I leave the issue open to be decided by the 1st respondent on merits. Petitioner shall make all submissions on merit including their defence pertaining to jurisdiction.

10.Since the impugned notice is of the year 2003, the authority/respondent is requested to pass appropriate orders within a period of 3 months from the date of this receipt of this order.

11. Accordingly, the Writ Petition is disposed with the above directions.No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

jas/kkd

To

1. The Commissioner of Income Tax,
   Chennai I (i/c),
   Room No.529, 5th Floor,
   New Block 121, Mahatma Gandhi Road,
   Chennai - 34.

2. The Deputy Commissioner of Income Tax,
   Special Range V,
   Chennai - 600 034.

3. The Joint Commissioner of Income Tax,
   Special Range V,
   Chennai - 600 034.

+1cc to Mr.Mallika Srinivasan, Advocate, S.R.No.103771
+1cc to Mrs.Hema Muralikrishnan, Advocate, S.R.No.103872

W.P.No.37124 of 2003
and
W.M.P.No.45056 of 2003

SR(CO)
CS/10/02/2020