IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.10.2019

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THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.43902 of 2006, 29882 & 29884 of 2007

Seshasayee Paper and Boards Limited,
Represented by its Director (Finance) & Secretary,
Sri V.Pichai
Pallipalayam,
Cauvery R.S.P.O.,
Erode - 638007. ... Petitioner in all WPs

Vs.

1. The Deputy Commissioner of Income Tax,
   Central Circle II (1),
   108, Uthamar Gandhi Road,
   Chennai - 600034.

2. The Assistant Commissioner of Income Tax,
   Central Circle II (1),
   108, Uthamar Gandhi Road,
   Chennai - 600034.

3. The Joint Commissioner of Income Tax (OSD),
   Central Circle II (1),
   108, Uthamar Gandhi Road,
   Chennai - 600034.

4. The Assistant Commissioner of Income Tax,
   Central Circle II (1) (i/c),
   108, Uthamar Gandhi Road,
   Chennai - 600034.

5. The Commissioner of Income Tax,
   Central Circle II (1),
   108, Uthamar Gandhi Road,
   Chennai - 600034.

..Respondents in WP.No.43902/2006

1. The Deputy Commissioner of Income Tax,
   Central Circle II (1) (i/c),
   46, Uthamar Gandhi Road,
   Chennai - 600034.

2. The Commissioner of Income Tax,
Central Circle II,
46, Uthamar Gandhi Road,
Chennai - 600034.

..Respondents in WP.Nos.29882 & 29884 of 2007

Prayer in WP.No.43902/2006 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records in AACCS 1192.G/4.S dated 29.03.2006 on the file of the third respondent and quash the same.

Prayer in WP.No.29882/2007 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records in PAN AACCS 1192G/ Central Circle II(1) dated 23.07.2007 of the first respondent relating to the Assessment Year 2001-02 and quash the same.

Prayer in WP.No.29884/2007 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records in PAN AACCS 1192G/ Central Circle II(1) dated 23.07.2007 of the first respondent relating to the Assessment Year 2002-03 and quash the same.

For Petitioner : Mr.M.P.Senthil Kumar
for Malika Srinivasan

For Respondents : Mr.A.P.Srinivas
Senior Standing Counsel

C O M M O N O R D E R

These three writ petitions are filed challenging the notice issued under Section 148 of the Income Tax Act, 1961, proposing to reopen the Assessment relevant to Assessment Years 1999-2000, 2001-2002 and 2002-2003, by contending that the petitioner's income assessable/chargeable to tax has escaped assessment within the meaning of Section 147 of the Income Tax Act, 1961.

2. The contentions of the petitioner in these writ petitions questioning the impugned notice issued under Section 148, are on several grounds, which include that the notice impugned was issued on mere change of opinion and that the same was issued beyond the period of four years.

3. Mr.M.P.Senthil Kumar, learned counsel appearing for the petitioner contended that in view of the grounds raised in these writ petitions, this Court can interfere with the impugned notice and set aside the same.

4. On the other hand, Mr.A.P.Srinivas, learned senior standing counsel for the Revenue/Respondents contended that in view of the decision made by the Apex Court in "GKN Driveshafts (India) Ltd. Vs. Income Tax Officer & others" reported in "(2003) 259 ITR 0019", the challenge made by the petitioner before this Court, even at the stage of issuance of Section 148 is not maintainable, as it is for the petitioner to make the objections to the reasons for reopening. He further submitted that the petitioner was already furnished with the reasons for reopening and therefore, it is for them to make the objections and thereafter, to allow the Assessing Officer to pass orders on such objections, as observed in "GKN Driveshafts (India) Ltd. Vs. Income Tax Officer & others" case.

5. Therefore, the contention of the learned senior standing counsel appearing for the Revenue/Respondents is that even before that stage has reached, the petitioner has approached this Court and filed the present writ petitions.

6. Heard both sides.

7. No doubt, the petitioner has raised several contentions touching upon the merits of the notice issued under Section 148 including the limitation and also by contending that it is based on change of opinion. But I am of the view that these contentions cannot be considered at this stage now, since the petitioner is bound to give objections to the reasons for reopening and thereafter, the Assessing Officer has to pass a reasoned order, as observed by the Apex Court in "GKN Driveshafts (India) Ltd. Vs. Income Tax Officer & others" case. When such course of action is yet to be completed, I do not think that these writ petitions at this stage can be maintained any further. Therefore, without expressing any view on the merits of the contentions raised by the petitioner against the impugned notice, these writ petitions are disposed of, by granting liberty to the petitioner to give objections to the reasons for reopening, within a period of four weeks from the date of receipt of a copy of this order. On receipt of such objections, the Assessing Officer shall consider the same and pass a reasoned order, within a period of four weeks thereafter.

Based on the order to be passed by the Assessing Officer, it is for the parties to workout their further course of action in accordance with law, thereafter. No costs.

-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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To

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+2 CCS to M/s. Malika Srinivasan, Advocate sr 86636
+3 Ccs to Mr.A.P.Srinivas, Advocate sr 86433.
+1 CC to M/s. Malika Srinivasan, Advocate sr 86636(17/12/2019)

SSI(CO)
SP(21/11/2019)