IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2019

CORAM

THE HONOURABLE Dr.JUSTICE ANITA SUMANTH

WP. No.6103 of 2018
and
WMP. Nos.7522 & 7523 of 2018

Mr.Dhiraj Bhansali
Partner,
M/s.Sha Rikhabdas Madaji & Co ... Petitioner

Vs.

Income-Tax Officer,
Non-Corporate Ward 6(3),
Chennai – 600 006.
... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorari to call for the records of the respondent pertaining to the assessment order dated 29.11.2017, assessed under Section 143(3) r/w 147 of the Income Tax Act, 1961 and the consequential demand notice dated 29.11.2017, issued under Section 156 of the Income Tax Act, 1961 and the accompanied notice dated 29.11.2017 issued under Section 274 read with Section 271 of the Income Tax Act 1961 all based on the rejection order of the respondent herein dated 19.02.2018 all pertaining to the petitioner herein and to quash the same.

For Petitioner : Mr.P.V.Balasubramanian, for
M/s.GMS Law Associates

For Respondent : Mrs.Hema Muralikrishnan,
Senior Standing Counsel

ORDER

Heard Mr.Balasubramanian, learned counsel for the petitioner and Mrs.Hema Muralikrishnan, learned Senior Standing Counsel for the respondent.

2. The petitioner is on the second round of litigation as regards proceedings for re-assessment under the provisions of the Income-Tax Act, 1961 (in short 'Act') for Assessment Year 2010-11. Pursuant to a return of income filed by the petitioner

an intimation under Section 143(1) was passed and the return was not taken up for scrutiny. While this was so, and the petitioner was under the impression that the proceedings for the Assessment Year in question have attained finality, a notice under Section 148 was issued by the respondent on 30.03.2017 which is the last day of the six (6) year period provided for re-assessment under the Act. The petitioner appeared before the Assessing Officer in response to notices for hearing dated 17.04.2017 and 04.08.2017 calling for production of various particulars. An order of re-assessment dated 29.11.2017 came to be passed by the respondent raising a demand of a sum of Rs.1,12,85,704/-.

3. The petitioner approached this Court in WP. No.33560 of 2017 praying for the issuance of Writ of a Certiorari quashing the aforesaid order of re-assessment and consequential notice of demand dated 29.11.2017. The writ petition was disposed on 21.12.2017 directing the Assessing Officer to furnish the reasons for re-opening and granting the petitioner fifteen days time to submit his objections thereto, in line with the procedure set out in this case of GKN Driveshafts (India) Ltd v. Income Tax Officer [(2003) 259 ITR 19 (SC)]. The respondent was directed to pass a speaking order and communicate the same within a period of two (2) weeks to the petitioner. The assessment was however not set aside.

4. Pursuant to the aforesaid order, the petitioner has been furnished reasons for re-opening and filed objections thereto which have been rejected vide order dated 19.02.2018. It is as against the aforesaid order that the petitioner is before this Court.

5. The petitioner in his objection dated 12.02.2018 has made submissions with regard to the merits of the assessment. With regard to the assumption of jurisdiction by the officer, the petitioner states that no new or tangible information has been brought on record and that the proposed re-assessment was merely a re-appreciation or review of the facts already on record.

6. The reasons for the re-assessment dated 02.02.2018 reveal that material has been received from the Information Wing on the basis of which the present proceedings have been initiated. The reasons state thus:

> 'An information received from the DDIT (Inv.)., Unit 2(1), Chennai vide letter No.DDIT (Inv)/U-2(1)/16-17 dated 28.03.2017. On verification of the bank account No. 60310500045 of Shri Vinith K Bhansali's maintained with ICICI Bank, Sowcarpet Branch, Chennai, the following amounts were credited as detailed below:

Date	Amount of Credit
01.09.2009	Rs.1,00,00,000
02.09.2009	Rs. 60,00,000
17.03.2010	Rs. 85,00,000

During the course of enquiry conducted by the DDIT, Shri Vinith K Bhansali has stated that he received a sum of Rs.1.60 crores as loan from M/s.Sha Rikhabdas Madaji & Co. (PAN AABFS0195H) a partnership firm where his father Shri Kantilal Bansali is one of the partners. On further verification by the DDIT, the firm M/s.Sha Rikhabdas Madaji & Co. explained the sources for the payments of Rs.1.60 crores to Shri Vinith K Bhansali as loan of Rs.1.75 crores received from M/s.Balaji Reality, Indore. No confirmation or any other evidence was produced before the Investigation Wing.

On verification from the ITD System, it is found that the assessee firm filed its return of income for Asst. Year 2010-11 on 22.03.2013 admitting a total income of Rs.7,630/-. On verification of the Part A-BS of the return of income filed the secured loan was shown as Nil and unsecured loan was shown as Rs.1,49,430/-. Hence, I have reason to believe that the transaction in respect of the sum of Rs.1.60 crores which is chargeable to income tax has escaped assessment for the AY 2010-11 within the meaning of Sec.147 of the Income Tax Act, 1961'

7. Bearing in mind the fact that the return filed by the petitioner was not taken up for scrutiny initially, and only an intimation under Section 143(1) has been issued, I am of the view that the assumption of jurisdiction in this case cannot be faulted, particularly since the respondent has, in the reasons for re-opening, cited tangible material upon which he rests his belief of escapement of income. In Assistant Commissioner of Income Tax v. Rajesh Jhaveri Stock Brokers Pvt. Ltd. [(2007) 291 ITR 500 (SC)], the Supreme Court has dealt with the escapement of income in cases where an intimation under Section 143(1) is issued and states thus:

'16. Mr. Monga submitted that the intimation under Section 143 (1) of the Act was as much an assessment as regular assessment of a return that has been picked up for scrutiny under Section 143 (3) of the Act. It is further submitted by Mr Monga that there was no tangible material that the AO came across to justify forming 'reasons to believe' that income had escaped assessment. The only material referred to were the statement of accounts, balance sheet, audited report etc. which in any way were available with the AO in respect of both the Petitioner and the firm for the AY in question at the time of issuance of the order/ intimation under Section 143 (1) of the Act. The reasons recorded were therefore at best a change of opinion based on suspicion and surmises.

17. It is further submitted by Mr Monga that the notice under Section 148 of the Act cannot be issued for the purpose of verification of the material already available with the authorities. Mr. Monga placed reliance on the decision in Commissioner of Income Tax v. Kelvinator of India Limited (2010) 187 Taxman 312 (SC), and decisions of this Court in Commissioner of Income Tax v. Orient Craft Limited(2013)354 ITR 536 (Del), Mohan Gupta (HUF) v. Commissioner of Income Tax (2014) 366 ITR 115 (Del) , Pr. Commissioner of Income Tax v. Tupperware India (P) Ltd. (2016) 236 Taxman 494 (Del), Commissioner of Income Tax v. Batra Bhatta Company (2010) 321 ITR 526 (Del), Commissioner of Income Tax-V v. Times Business Solution Ltd. (2013) 354 ITR 25 (Del), Commissioner of Income Tax - Central v. Indo Arab Air Services (2016) 283 CTR 92 (Del) and Asia Satellite Telecommunications Co. Ltd. v. Assistant Director of Income-tax, International Taxation (2013) 29 taxmann.com 317 (Del).

Submissions of counsel for the Revenue

18. Countering the above submissions it is pointed by Mr. Dileep Shivpuri, learned counsel for the Revenue that the recent decision of the Supreme Court in Deputy Commissioner of Income-tax v. Zuari Estate Development & Investment Co. Ltd. (2015) 373 ITR 661 (SC) settled the legal position that where the return had been processed under Section 143 (1) of the Act, there was no „assessment" as such and therefore, the question of change of opinion did not arise. He referred

to the order dated 10th February 2016 passed by the High Court of Judicature at Bombay in Writ Petition No. 3027 of 2015 (Khubchandani Healthparks Pvt. Ltd. v. Income Tax Officer 6 (3) (4) Mumbai) where the above legal position was further explicated.'

In the light of the discussion above as well as the judgement of the Supreme Court in the case of Rajesh Jhaveri (supra), there is no merit in this writ petition and the same is dismissed.

8. The order of re-assessment dated 29.11.2017 thus stands revived in the light of the rejection of the objections of the petitioner dated 19.02.2018. The petitioner seeks and is granted liberty to challenge the order of re-assessment dated 29.11.2017 before the Commissioner of Income Tax (Appeals). Since the petitioner has been litigating against the proceedings for re-assessment from 19.12.2017 when it filed the first writ petition challenging the order of re-assessment, the appeal shall be received by the Commissioner of Income Tax (Appeals), if filed within two weeks from today, without reference to limitation.

9. The Writ Petition is disposed of in the above terms. Connected Miscellaneous Petitions are closed. No costs.

Rkp 21/03/2019

BEING MENTIONED

This matter was under the caption for Being Mentioned on 11.04.2019 pursuant to the Order of this Court dated 21.03.2019 and made herein in the presence of the aforesaid counsel on the either side, the Court made the following Order:-

The matter is listed today under the caption 'for being mentioned' for a specific direction to return the original order of assessment filed along with W.P.No.33560 of 2017.

2. I find, there is already a noting by this Bench, in the original order, dated 21.03.2019 passed in W.P.no.6103 of 2018 that the original order of assessment filed in W.P.no.33560 of 2017 be returned on 03.04.2019, i.e., the date on which the order is directed to be issued.

3. In the light of the above, there is no impediment for the return of the order. Let the same be returned forthwith.

4. Further, in paragraph 8 of the order, dated 21.03.2019, passed in the above writ petition, the time for filing of appeal is set out as two weeks from 21.03.2019.

4.1. Considering the above circumstances, the time granted to file Appeal stands extended by two weeks from today.

5. It is made clear that, excepting the fixing of time limit, the order dated 21.03.2019 passed in the above writ petition, shall hold good / remain unaltered.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

rkp

To

Income-Tax Officer,
Non-Corporate Ward 6(3),
Chennai - 600 006.

+1cc to M/s.GMS Law Associates, Advocate sr.35754

WP. No.6103 of 2018
and
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GN(27/04/2019)