IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.10.2019

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

Writ Petition Nos.24901, 24903 and 24904 of 2009

M/s.Tamil Nadu State Transport Corporation (Villupuram) Ltd.,
represented by Managing Director
3/137, Sala Medu, Valutha Reddy Post,
Villupuram - 605 062. ...Petitioner in the above W.Ps

Vs

The Assistant Commissioner of Income Tax
Circle I, Soorappa Naicken Chavady,
Cuddalore - 607 002. ... Respondent in the above W.Ps

Prayer: Petitions filed under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorari to call for the records of the respondent in PAN No.AAACT1107E/T11103 and to quash the impugned notice dated 27.03.2009, 30.03.2019 issued for the Assessment Year 2002-2003, 2004-2005 and 2005-2006.

For Petitioner : Mr.J.Balachander
and Ms.S.Indumathi

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

C O M M O N O R D E R

Heard Mr.J.Balachander, learned counsel for the petitioner and Mr.A.P.Srinivas, learned Senior Standing counsel for the respondents.

2.The petitioner challenges notices dated 30.03.2009 issued by the Assistant Commissioner of Income Tax, respondent herein in relation to assessment years 2002-03, 2004-05 and 2005-06 issued under Section 148 of the Income Tax Act, 1961 (in short 'Act').

3. The primary ground of challenge is that the impugned notices have been issued beyond the period of four years from the end of the relevant assessment year and as such are barred by limitation.

4. Pursuant to the receipt of the impugned notices and in response thereto, the petitioner did not file a return of income, but merely sought, vide reply dated 20.04.2009, the reasons recorded, based on which the proceedings for re-assessment were initiated. The reply dated 20.04.2009 reads as follows:

> '1.We received your notice cited on 28.03.2009.
>
> 2. Our assessment for Assessment Year 2002-2003 was completed by order made under section 143 (3) determining the total income at Nil and income under section 115JB at Rs.5,21,04,625.
>
> 3. This assessment was subsequently revised to give effect to the scheme of amalgamation and based on directions in the appeal filed before Commissioner of Income tax (Appeals), the assessment was re-determining the total income at Nil even under section 115 JB.
>
> 4. We hereby request you to give the reasons recorded for re-opening the assessment in writing to enable us to take further steps pursuant to the notice cited.
>
> 5. You are aware that you have given us only 30 days time to file the Return of Income pursuant to notice cited and hence your reply to communicate the reasons recorded for re-opening the assessment should be sent to us immediately.'

5. I am of the view that the petitioner has not followed the proper procedure as required under law in matters of re-assessment, and ought to have complied with the the notices, filing a return of income within the time frame indicated. It was incumbent upon the petitioner/assessee to have filed a return of income and only thereafter sought a copy of reasons for re-assessment.

6. The Supreme Court in the case of GKN Driveshafts (India) Limited V. Income Tax Officer and others (259 ITR 1) has set out the proper procedure to be followed in matters of re-assessment as follows:

> We see no justifiable reason to interfere with the order under challenge. However, we clarify that when a notice under Section 148 of the Income tax Act is issued, the proper course of action for the noticee is to file return and if he so desires, to seek reasons for issuing notices. The assessing officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the noticee is entitled to file objections to issuance of notice and the

assessing officer is bound to dispose of the same by passing a speaking order. In the instant case, as the reasons have been disclosed in these proceedings, the assessing officer has to dispose of the objections, if filed, by passing a speaking Order before proceeding with the assessment in respect of the abovesaid five assessment years.

7. In the light of the aforesaid, these Writ Petitions are liable to be dismissed and I do so. However, putting in motion the appropriate procedure as enunciated by the Supreme Court, the petitioner is directed to comply with the impugned notices dated 30.03.2009 and file returns of income for the Assessment Years in question within a period of four (4) weeks from today. The settled procedure for re-assessment shall be followed by both parties thereafter. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

The Assistant Commissioner of Income Tax
Circle I, Soorappa Naicken Chavady,
Cuddalore - 607 002.

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GMR(CO)
SSM(24/10/2019)