IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 19.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.Nos.989 of 2011, 1481 and 1482 of 2004
and
W.P.M.P.Nos.1568 and 1569 of 2004

W.P.No.989 of 2011:
M/s.PPN Power Generating Company Pvt Ltd
III Floor, Jhaver Plaza
1A Nungambakkam High Road
Chennai-600 034. ...Petitioner

Vs

1.The Commissioner of Income Tax,
Aayakar Bhavan
121, Uthamar Gandhi Salai
Chennai 600 034.

2.The Asst. Commissioner of Income Tax,
Company Circle V(II)
121, Uthamar Gandhi Salai
Chennai 600 034.

3.The Additional Commissioner of Income Tax
Transfer Pricing Officer II (i/c)
122, Uthamar Gandhi Salai
Chennai 600 034. ...Respondents

W.P.Nos.1481 and 1482 of 2004:
M/s.U.M.S.Radio Factory Limited,
Avinashi Road Coimbatore,
Rep. by its Chairman ...Petitioner

Vs

1.The Additional Commissioner of Income Tax,
Range I,
Coimbatore.

2.The Deputy Commissioner of Income Tax,
Company Circle -1 (1),
Coimbatore.

3.The Assistant Commissioner of Income Tax,
Company Circle -1 (1),
Coimbatore. ...Respondents

Prayer in W.P.No.989 of 2011: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari calling for the records comprised in the impugned notice PAN: AABCP8131D dated 25.02.2010 in respect of Assessment year 2003-04 issued by the second respondent and received by the petitioner only on 08.09.2010 under Section 148 of the Income Tax Act, 1961 and the consequential proceedings initiated by the 3rd respondent by the impugned notice dated 16.12.2010 bearing reference C.R.No.P-208/TPO-II/A.Y.2003-04 pursuant to a reference under S.92CA of the Act by the 2nd respondent in respect of Assessment year 2003-04 and quash the same as wholly without jurisdiction, illegal, arbitrary and contrary to the express mandates set out under the provisions of the Income Tax, 1961.

Prayer in W.P.No.1481 of 2004: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus calling for the records of the second respondent herein in respect of all further proceedings pursuant to the notice dated 25.10.2002 in P.A.No.AAACU 2428 D issued by the second respondent herein under Sec.148 of the Income Tax Act in respect of the assessment year 1996-97 and quash the same and consequently forbear the respondents herein from taking any further proceedings or reopening the assessment of the petitioner in respect of the assessment year 1996-97 pursuant to the aforesaid notice.

Prayer in W.P.No.1482 of 2004: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus calling for the records of the first/second respondent herein in respect of all further proceedings pursuant to the notice dated 05.11.2002 in PAN.No.AAACU 2428 D issued by the second respondent herein under Sec.148 of the Income Tax Act in respect of the assessment year 1997-98 and quash the same and consequently forbear the respondents herein from taking any further proceedings or reopening the assessment of the petitioner in respect of the assessment year 1997-98 pursuant to the aforesaid notice.

For Petitioner : Mr.Rahul Balaji
(In W.P.989 of 2011)

For Petitioner : Mr.AR.L.Sundaresan (SC)
(In W.Ps.1481 & 1482 of 2004) for M/S.AL.Gandhimathi

For Respondents: Mr.A.P.Srinivas (SSC)
In all Wps

COMMON ORDER

In all these Writ Petitions, the notice under Section 148 of the Income Tax Act, 1961 (hereinafter called as 'the Act') is put under challenge. The learned counsels predominantly raised grounds stating that the notice is barred by limitation as contemplated under Section 148 of the Act and that the reasons which are sought to be adduced, are of such of opinion, which is improper. In support of their contentions, all the learned counsels relied upon various Judgments of the Hon'ble Supreme Court.

2. I do not think it appropriate to refer to all the decisions of the Hon'ble Supreme Court, since this Court intends to follow the decision of the Hon'ble Supreme Court rendered in GKN Driveshafts (India) Ltd. Vs. Income-tax Officer itself reported in [2002] 125 Taxman 963 (SC), wherein the order of interference to a notice under Section 148 of the Act, was clarified to the effect that the appropriate course of action for the noticee is to file his returns and if he so desires to issue notice. Thereafter the assessing officer is bound to give reason within a reasonable time and on receipt of reasons, the noticee is entitled to file an objection to the issuance of notice and the assessing officer is bound to dispose of the same by passing a speaking order.

3. When such is the law laid down by the Honorable Supreme Court, Mr.Rahul Balaji, learned counsel for the petitioner would submit that GKN Driveshafts (India) Ltd's case is not in consonance with the provisions of the Act and therefore it is not binding. I am unable to appreciate such a submission made. When the Hon'ble Supreme Court in GKN Driveshafts (India) Ltd's case had categorically clarified the procedure to be followed pursuant to the issuance of notice, which includes filing of returns and seeking for objections, it cannot be said that such a contention is opposed to the provisions of the Act and further submitted that the decision should not be followed is far-fetched. Since this Court has relied upon the decision of GKN Driveshafts (India) Ltd's case of the Hon'ble Supreme Court, which has a binding nature on this Court in view of Article 141 of the Constitution of India, I am not relying upon any of the other decisions cited by the learned counsels.

4. With the above observations, the Writ Petitions stand closed with liberty to the petitioner either to file their

returns or seek for reasons, if not already given. Such an exercise of raising their objections shall be done within a period of four weeks from the date of receipt of a copy of this order. In case, such objections are filed before the assessing officer, the same shall be considered in accordance with law and reasoned speaking orders shall be passed, as expeditiously as possible. In case, any of the assessees had already filed their objections, the same shall also be considered within the said period of four weeks, from the date of receipt of a copy of the order. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

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To

1.The Commissioner of Income Tax,
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121, Uthamar Gandhi Salai
Chennai 600 034.

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4.The Additional Commissioner of Income Tax,
Range I,
Coimbatore.

5.The Deputy Commissioner of Income Tax,
Company Circle -1 (1),
Coimbatore.

6.The Assistant Commissioner of Income Tax,
Company Circle -1 (1),
Coimbatore.

+1cc to M/S.R.Parthasarathy ,Advocate SR.61752 dt:19/7/19
+2cc to Mr.A.P.Srinivas, Advocate SR.62473,62471 dt:22/7/19
+2cc to M/S.AL.Gandhimathi, Advocate, SR.62445

JP(CO)
CB(30/09/2019)

W.P.Nos.989 of 2011, 1481 and 1482 of 2004
and
W.P.M.P.Nos.1568 and 1569 of 2004