

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 14.3.2019

CORAM

THE HONOURABLE DR.JUSTICE VINEET KOTHARI
AND
THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.A.Nos.830 and 835 of 2019
and
C.M.P.No.6495 of 2019

M/s.Hanon Automotive Systems
India Private Limited,
(Previously known as M/s.Visteon Automotive
Systems India Private Limited)
represented by its Authorised Signatory
Mr.B.Swaminathan
Keelakaranai Village, Malrosapuram Post,
Maraimalai Nagar, Chengalpatu 603 204. Appellant/ Petitioner

Versus

1. The Deputy Commissioner of
Income Tax
Corporate Circle 2(2)
Room 512, 5th Floor,
Wanaparthi Block, Aayakar Bhavan,
121, M.G. Road, Nungambakkam,
Chennai 600 034.
 2. The Principal Commissioner of
Income Tax-2,
121, M.G. Road, Nungambakkam,
Chennai.
- Respondents/ Respondent

Prayer: Writ Appeals filed under Clause 15 of Letters Patent
against the order of this court dated 11.1.2019 in W.P.Nos.938
and 941 of 2019.

Prayer in W.P.Nos.938 of 2019:

This Writ Petitioner filed under Article 226 of the
Constitution of India Praying to issue a Writ of Certiorari to
call for the records on the file of the 1st respondent and quash
the impugned order in PAN. AAACM6890R in notice number ITBA/
AST/ S/ 148/ 2017-18 dated 23.03.2018 issued under section 148
of the Income Tax Act for the Assessment Year 2011-12.

Prayer in W.P.No.941 of 2019:

This Writ Petitioner filed under Article 226 of the Constitution of India Praying to issue a Writ of Certiorari to call for the records on the file of the 1st respondent and quash the impugned order in PAN. AAACM6890R dated 07.12.2018 passed under section 143(3) read with section 147 of the Income Tax Act for the Assessment Year 2011-12.

For appellant : Mr.N.V.Balaji

For Respondents : Mrs.Hema Muralikrishnan
Senior Standing Counsel

COMMON JUDGMENT

(Judgment of the court was made by Dr.VINEET KOTHARI, J.)

The Assessee M/s.Hanon Automotive Systems India Private Limited has filed these Intra-Court Appeals being aggrieved by the order of the learned Single Judge dated 11.1.2019, dismissing the writ petitions which were filed by the Assessee challenging the initiation of re-assessment proceedings under Section 147/148 of the Income Tax Act, 1961 against the Assessee for the Assessment Year 2011-2012.

2. The reasons for initiation of the said re-assessment proceedings are quoted below for ready reference:-

" It is seen the P&L a/c, net profit during the year is Rs.1162.84 million whereas net profit adopted in the income computation statement is only Rs.116,27,98,958/-. The difference of Rs.50,000/- is income escaped assessment.

On scrutiny of records, it is revealed that as per Col.17(a) of Form 3CD audit report, capital expenditure debited to P&L a/c is Rs.14,16,73,150/- being development and testing charges. As per P&L a/c, total development and testing charges debited is Rs.22,53,57,511/-. The assessee did not add back the same in the Income Computation statement. Since capital expenditure is not allowable expenditure, the same should be disallowed."

3. The Assessee did not raise any objection against the reasons indicated to him. Thereupon, the learned Assessing Authority has passed the order of re-assessment dated 7.12.2018 adding back the said Development and Testing Charges of Rs.22,53,57,511/- holding it to be a Capital Expenditure which was claimed as Revenue Expenditure by the Assessee in the Profit and Loss Account.

4. Aggrieved by the same, instead of filing regular Appeals before the Commissioner of Income Tax (Appeals), the Assessee filed the present writ petitions under Article 226 of the Constitution of India which, however, came to be dismissed by the learned Single Judge by the impugned order which is under Appeals before us under Clause 15 of the Letters Patent.

5. The learned Single Judge held that the Assessee, having not filed any objection before the Assessing Authority against initiation of re-assessment proceedings for the reasons for re-opening the Assessment, he was not entitled to question the jurisdiction of the Assessing Authority now and therefore, the writ petition was not maintainable and the Assessee ought to have filed regular Statutory Appeals under the provisions of the Act.

6. Being aggrieved, the Assessee has approached the Division Bench in this Intra-Court Appeals.

7. The learned counsel for the Assessee Mr.N.V.Balaji submitted that there was lack of jurisdiction with the Assessing Authority to re-open the said Assessment as in the earlier Assessment Years, under section 143(3) of the Act this aspect of the matter about the Development and Testing Charges being claimed as Revenue Expenditure by the Assessee was duly considered by the Assessing Authority wherein the Assessee had supplied the relevant materials and the same came to be allowed as Revenue Expenditure by the Assessing Authority in Assessment under Section 143(3) and therefore, on a change of opinion, the Assessing Authority could not have re-opened the Assessment Order under Section 147/148 of the Act to disallow the same as Capital Expenditure. He, therefore, submitted that the impugned notice under Section 143(3) read with Section 147 of the Act itself deserves to be quashed. As far as the first reason of disclosing the net profits as per the Profit & Loss Account, which was as disclosed as Rs.1162.84 Millions was merely detailed as Rs.116,27,98,958/- and therefore, a difference of Rs.50,000/- could not be treated as escaped income. He therefore, submitted that both the reasons are not reasons at all in the eye of law and therefore, re-assessment deserves to be quashed. He submitted that even though no objection was raised before the Assessing Authority at the time of impugned notice under Section 147/148 of the Act or upon the reasons for re-opening supplied to him, since the question goes to the root of the jurisdiction of the Assessing Authority to re-open, the writ petition was maintainable and the learned Single Judge has erred in rejecting the writ petition. He further submitted that the Assessing Authority ought to have recorded the reasons also about the failure on the part of the Assessee to disclose the relevant materials fully and truly during the course of Original Assessment which was done earlier and therefore, it is a vital question that to be decided in the present case. He relied upon the judgment of the Supreme Court

in the case of Calcutta Discount Co. Ltd. v. Income Tax Officer ((1961) 41 ITR 191 (SC) and also the decision of the Commissioner of Income-tax, Chennai v. Schwing Stetter India (P) Ltd. ((2015) 61 Taxmann.com 19 (Madras)).

8. Having heard the learned counsel appearing for the appellant, we are satisfied that there is no merit in the present writ appeals and the same deserve to be dismissed for the following reasons. Firstly, we may observe that the learned Single Judge was absolutely right in holding that the Assessee, having not raised an objection before the Assessing Authority to the re-opening of the assessment under Section 147/148 of the Act, should be deemed to have acquiesced to the same. Nothing prevented the Assessee from raising the objection, which could have been dealt with by the Assessing Authority in accordance with law.

9. Having not raised any such objection before Assessing Authority that the expenditure claimed as Revenue Expenditure was already considered and allowed as Revenue Expenditure and therefore, for treating the same now as Capital Expenditure is a change of opinion, is not a tenable contention and therefore, it cannot be a ground to be raised in writ jurisdiction. Further, when a specific and adequate alternative remedy is available to the Assessee for taking such a plea to find as to whether the expenditure claimed by the Assessee is to be treated as Revenue Expenditure or Capital Expenditure, if the High Court was to entertain such controversy on merits, the entire litigation in this respect can be just brought on the Board of the High Court instead of availing the regular Appellate Forum provided under the Act.

10. The Income Tax Act is a self-contained Act and the High Court, under Section 260A of the Act, in its Appellate Jurisdiction, is not the proper forum for deciding such a mixed question of facts and law. The decision of the Hon'ble Supreme Court in Calcutta Discount Co. Ltd. v. Income-tax Officer ((1961) 41 ITR 191 (SC)) and the decision of a co-ordinate Bench of this court in Commissioner of Income-tax, Chennai v. Schwing Stetter India (P) Ltd. ((2015) 61 Taxmann.com 19 (Madras)), cited by the learned counsel for the Appellant cannot be applied to the present case as in each and every case, the circumstances warranting interference by High Court, in its writ jurisdiction, would vary.

11. We are satisfied that in the present case, there was no change of opinion on the part of the Assessing Authority and therefore, the re-opening of the Assessment Order was initiated on valid and reasonable grounds. Even the difference between 'change of opinion' and 'reasons to believe'-the condition precedent for invoking Sections 147 and 148 of the Act is very thin. Even if there is a correct disclosure of the expenditure, it may be, in the opinion of the Assessee, a Revenue Expenditure

but, in the opinion of the Assessing Authority, it can be a Capital Expenditure. But, that deserves to be decided on the basis of facts by the higher Appellate Forums and that cannot become the ground to straightaway invoke the writ jurisdiction under Article 226 of the Constitution of India. Therefore, we are satisfied that the order of the learned Single Judge does not suffer from infirmity so as to call for any interference and the present appeals are devoid of merit and are liable to be dismissed. Accordingly, the Appeals of the Assessee are dismissed. No costs. The connected miscellaneous petition is also dismissed.

12. If the Assessee now files the regular Statutory Appeal within a period of two weeks from today, the same could be entertained without objection as to the period of limitation, however subject to compliance of other usual conditions by the Assessee for maintaining such Appeals under Section 246 of the Act.

Sd/-

Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

ssk

To:

1. The Deputy Commissioner of
Income Tax
Corporate Circle 2(2)
Room 512, 5th Floor,
Wanaparthi Block, Aayakar Bhavan,
121, M.G. Road, Nungambakkam,
Chennai 600 034.

2. The Principal Commissioner of
Income Tax-2,
121, M.G. Road, Nungambakkam,
Chennai.

+1cc to Mrs.Hema Muralikrishnan , Advocate SR.No. 24847

+2ccs to Mr.N.V.Balaji, Advocate SR.No. 24138, 24139

W.A.Nos.830 & 835 of 2019

A.SK(03/04/2019)