IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 26.08.2019
CORAM
THE HONOURABLE MR. JUSTICE M. SUNDAR

W.P.Nos.25239, 25241, 25242, 25244,
25245 & 25248 of 2019
WMP.Nos.24807, 24808, 24812 to 24819,
24823 & 24824 of 2019

Mohan Ravi ...Petitioner in all Writ Petitions

--Vs--

The Income Tax Officer
Non-Corporate Ward 20(5) CHE
121, Nungambakkam High Road
Chennai-600034
... Respondent in all Writ Petitions

Prayer: Writ Petitions filed under Article 226 of the Constitution of India, praying to issue a writ of certiorari, calling for the records on the file of the respondent in PAN.ADLPR6964Q and quash the impugned notices in Nos.ITBA/AST/S/148/2018-19/ 1015529572(1)/ 1015529571(1)/ 1015522673(1)/ 1015522677(1) /1015522683(1) /1015522669(1) dated 29.03.2019 issued u/s.148 of the Act for the assessment years 2012-13 to 2017-18 along with the consequential proceedings in C.Nos. ADLPR6964Q/ 2019-20/11/9/7/6/3/1 dated 31.07.2019 as illegal and without jurisdiction.

For Petitioner : Mr.Raghav Rajeev Menon in all WP's

For Respondent : Mr.J.Narayanaswamy Senior Standing Counsel in all WPs

O R D E R

Mr.Raghav Rajeev Menon, learned counsel on record for writ petitioner and Mr.J.Narayanaswami, learned Senior Standing counsel for respondent are before this Court.

2. With consent of learned counsel on both sides, the main writ petitions are taken up, heard out and are being disposed of.

3. These six writ petitions were moved by way of lunch motion today, expressing imminence, immediacy and urgency. Request for lunch motion at half past ten in the forenoon was acceded to and the matters have been taken up.

4. It was submitted that these six writ petitions arise out of a common factual matrix and the subject matter arises under 'Income Tax Act, 1961' ('IT Act' for brevity). It was submitted that only the assessment years in these six writ petitions are different and the six assessment years are 2012-13 to 2017-18 (six successive assessment years). Be that as it may, it was also submitted that the central theme/core issue in these writ petitions is the same. Therefore, this common order will govern these six writ petitions.

5. Six different notices, all dated 29.03.2019, were issued to the writ petitioner inter alia under Section 148 of IT Act on the ground that the authority believes that income chargeable to tax for the respective assessment years qua notices had escaped assessment within the meaning of Section 147 of IT Act (these six notices under Section 148 shall hereinafter be collectively referred to as 'impugned notices I' for the sake of convenience, clarity and brevity). On receipt of impugned notices I, writ petitioner/assessee through his chartered accountant sent six different communications, all dated 26.04.2019, and this Court is informed that the communications are ad verbatim the same. These communications dated 26.04.2019 were sent by a chartered accountant firm (acting on behalf of the writ petitioner and on instructions from the writ petitioner/assessee) sought for reasons for reopening the assessments and submitted that reasons for reopening the assessments may be provided at the earliest so as to enable the writ petitioner/assessee to file objections to the same.

6. To be noted these communications dated 26.04.2019 were sent by placing reliance on the judgment of the Hon'ble Supreme Court in GKN Driveshafts (India) Ltd. vs. Income Tax Officer and Others reported in [(2003) 259 ITR 19 (SC)].

7. To these communications dated 26.04.2019, the Department responded vide communications, which is also dated 26.04.2019. Sum and substance of the response of the Department is that there was a survey inter alia under Section 133A of IT Act and i.e., survey conducted in the premises of the writ petitioner/assessee on 18.03.2019. It was also pointed out that during such survey, bills/invoices for all the expenses claimed, loan agreement copies etc., were called for but no details have been furnished until 25.03.2019.

8. To be noted, in these communications dated 26.04.2019, the date of survey has been wrongly mentioned as 18.03.2018. The correct date is 18.03.2019. To be noted, it was also pointed out that the writ petitioner/assessee has claimed expenses, which was in the region of 60 per cent (59.23 per cent to be precise) of the income offered.

9. In effect, the reason for reopening was that the writ petitioner/assessee was not able to provide bills/invoices for expenses to the tune of nearly 60 per cent (59.23 per cent set out with exactitude), claimed as expenses and that the details have not been furnished even though time was granted.

10. After reasons for reopening were so furnished, the writ petitioner/assessee, through his chartered accountants sent another set of six communications all dated 11.05.2019 setting out objections to the reopening. It is submitted that these objections are akin to each other. After considering the objections raised by the writ petitioner/assessee for reopening, the respondent has passed six separate speaking orders all dated 31.07.2019 bearing reference nos. C.Nos. ADLPR6964Q/2019-20/11, ADLPR6964Q/2019-20/9, ADLPR6964Q/2019-20/7, ADLPR6964Q/2019-20/6, ADLPR6964Q/2019-20/3, ADLPR6964Q/2019-20/1 (these speaking orders shall herein after referred to as 'impugned notices II' for the sake of convenience, clarity and brevity). What is of utmost importance is that, it is not disputed that impugned notices II were served on the writ petitioner on 01.08.2019 or latest by 02.08.2019. Learned counsel for the writ petitioner is unable to give the correct date but submits that it was certainly served on or before 02.08.2019.

11. To be noted, instant writ petitions have been presented only by 21.08.2019, filed on 22.08.2019 and as already mentioned supra have been moved by way of lunch motion today. In the interregnum i.e., between 02.08.2019 and 21.08.2019, pursuant to impugned notices II, the respondent has sent communications dated 17.08.2019, reminding the writ petitioner/assessee that certain details were sought for vide a letter dated 31.07.2019 and that the same have not been furnished. In response to this, writ petitioner/assessee did not say that he intend to assail the impugned notices I and impugned notices II, on the contrary, writ petitioner/assessee through their auditors sent communications dated 19.08.2019 stating that the authorized representative of the assessee was out of the country and therefore, requested time till 1st week of September 2019.

12. To be noted, it is not mentioned that the writ petitioner was out of the country but it is stated that the authorized representative was out of the country. It is in such a backdrop that instant writ petitions have been filed in the

aforesaid manner on 21.08.2019 and moved by way of lunch motion today i.e. 26.08.2019, assailing impugned notices I and impugned notices II.

13. In the hearing, notwithstanding several averments that have been made in the affidavits filed in support of the writ petitions, notwithstanding several grounds that have been raised in the affidavit filed in support of the writ petitions and several contentions that have been canvassed, submissions were focused on points which can be broadly summarised as follows:

(a) GKN Driveshafts (India) Ltd.(supra) principle has been violated qua impugned orders I and impugned orders II.

(b) There should be tangible reasons for reopening and the respondent has not shown any tangible reasons for reopening.

(c) Writ petitioner was not given adequate time to produce documents in respect of expenses post survey on 18.03.2019.

(d) There can be no reopening pursuant to survey under Section 133C of IT Act.

14. Mr.J.Narayanaswami, learned Senior Standing Counsel (Income Tax), who accepted notice on behalf of the sole respondent in all the six writ petitions, pointed out that a personal hearing pursuant to impugned notices II has been fixed today i.e., 26.08.2019. It was submitted by learned counsel for the writ petitioner/assessee that an adjournment was sought as it was fixed at 11.30 A.M. in the forenoon today. Therefore, it emerges with clarity that the writ petitioner/assessee was served with copies of the impugned notices II on 02.08.2019 itself but has chosen to present these writ petitions in this Court only on 21.08.2019, obviously after receipt of notice fixing personal hearing on 26.08.2019. To be noted, this aspect of the matter will be dealt with in the latter part of the order.

15. It was pointed out that GKN Driveshafts (India) Ltd. (supra) principle is that in cases of reopening, it is open to the assessee to ask for reasons for reopening, reasons have to be given to the assessee, who is entitled to file objections on the same and the department should pass a speaking order on the objections.

16. In this case, there is no disputation or disagreement that this procedure i.e., GKN Driveshafts (India) Ltd. (supra) principle has been followed. The dates have already been alluded to supra. What is being urged is that the speaking order does not deal with the objections of the writ petitioner correctly. In response to this, learned revenue counsel pointed out that reasons given for reopening are based on survey dated 18.03.2019 and the writ petitioner/assessee not producing bills/invoices loan agreements etc., in spite of time being granted, whereas the objections are in a complete tangent. However, the objections have been dealt with, therefore, it cannot be gainsaid that that the GKN Driveshafts (India) Ltd. (supra) principle has not been followed. This answers argument (a) of the writ petitioner.

17. In the instant case, there has been a survey and the writ petitioner has been called upon produce certain documents. In one breath, the writ petitioner/assessee submits that adequate time has not been given for producing the documents and in same breath the writ petitioner/assessee submits that the very reopening itself raises a jurisdictional fact.

18. With regard to tangible reasons for reopening and reopening pursuant to survey under Section 133A of IT Act, this Court finds that there is a reference to an order of Visakhapatnam Income Tax Appeallate Tribunal in the objections, but the judgment placed before this Court being an order made in a regular Tax Case Appeal No.702 of 2009 dated 11.07.2019 by a Hon'ble Division Bench of this court does not deal with a case of survey under 133A. Some other judgments are also before this Court, which also did not turn on a survey under Section 133A. Therefore, other than the judgment of the Visakhapatnam Tribunal, which is referred to in the objections, there is nothing to show that there cannot be reopening in cases of survey when the writ petitioner assessee is unable to explain excessive deductions claimed by producing supporting documents.

19. On the contrary, a perusal of clause (ca) of Explanation 2 of Section 147 makes it clear that Section 133C survey and assessing officer noticing in such survey that excessive deduction has been claimed is brought within the sweep of income escaping assessment within the meaning of Section 147 of IT Act. In other words, a plain reading of aforesaid clause (ca) of Explanation 2 of Section 147 makes it clear that it cannot be gainsaid that Section 133C survey cannot be the basis for a Section 148 notice regarding escaped assessment (escaped assessment within the meaning of Section 147 of IT Act). This answers points (b) and (d) urged by the writ petitioner.

20. In any event, in the instant case it is to be noted that the writ petitioner/assessee submits that sufficient time has not been granted for producing the documents. Furthermore,

even in response to impugned notices II, the writ petitioner has written to the respondent asking for time till first week of September, 2019.

21. Therefore, it comes out clearly that this is an attempt to derail the hearing before the respondent today i.e., 26.08.2019, as there is no explanation forthcoming from the writ petitioner for not coming before this Court between 02.08.2019 and 21.08.2019, more particularly, when during this period the writ petitioner was issued a reminder notice dated 17.08.2019 and writ petitioner responded to the same on 19.08.2019 requesting for time. This leaves this Court with the view that the writ petitioner has not approached this Court in the instant writ petitions with the requisite sincerity. On the contrary, these writ petitions has been moved at the 11th hour. This Court is of the opinion that it is not only the 11th hour but 59th minute of the 11th hour.

22. In this backdrop, this Court is not inclined to interfere with the impugned notices I and impugned notices II. Even in the objections, being dealt with vide impugned notices II, it has been made clear that it is open to

the writ petitioner/assessee to establish that these questions are left open to be decided by the Assessing Authority. It is open to the writ petitioner to raise this very issue in the assessment proceedings and, if raised, and if documents, supporting deductions are filed, the same shall be considered, as mentioned in the impugned notices II, which deal with the objections.

23. This Court is of the considered view that such 11th hour petitions will derail assessments process under fiscal law statues. It is made clear that this view is taken in the peculiar trajectory of this case, as the writ petitioner has approached this Court at the 11th hour particularly when the writ petitioner had all the time in the world to approach this Court earlier. As alluded to supra, these writ petitions have been filed at the 11th hour, pursuant to impugned notices II, on realizing that the personal hearing is fixed on 26.08.2019. If writ petitioner had sought an adjournment in the forenoon today and if the hearing is rescheduled, the respondent shall consider all documents that are furnished by writ petitioner /assessee interalia in support of deductions claimed before completing the assessment. If such a scenario unfurls, the same shall be done uninfluenced and untrammelled by anything that is se tou in the instant order. This answers point (c) raised by writ petitioner.

24. These writ petitions are dismissed as bereft of bonafides and lacking in merits, albeit preserving rights of writ petitioner to the limited extent set out supra. Consequently, connected miscellaneous petitions are closed. However, there shall be no order as to costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

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To

The Income Tax Officer
Non-Corporate Ward 20(5) CHE
121, Nungambakkam High Road
Chennai-600034

+1 cc to M/s.J.Narayanaswamy Advocate sr74121

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