IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2019

CORAM

THE HONOURABLE Dr. JUSTICE ANITA SUMANTH

Writ Petition No.30855 of 2017
and
W.M.P.No.33778 of 2017

ABM Granites (India) Private Limited,
represented by its Managing Director,
Mrs.P.Mythili .. Petitioner

vs.

The Assistant Commissioner of Income-tax,
Circle-2, Erode 638 001. .. Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records on the file of the respondent and quash the impugned order undated bearing No.NIL issued by Respondent and direct the respondent not to enforce the demand if any before this Court.

For Petitioner : Mr. V.S.Jayakumar

For Respondent : Mr. A.N.R.Jaya Pratap,
Standing Counsel

O R D E R

The Writ petitioner challenges an undated order passed by the respondent rejecting the objections filed by the petitioner in regard to assumption of jurisdiction for re-assessment for Assessment Year 2012-2013.

2. Heard Mr.V.S.Jayakumar, learned counsel for the petitioner and Mr.A.N.R.Jayapratap, learned standing counsel for the respondent.

3. The order of assessment under scrutiny has been passed in this case on 27.02.2014. In the course of assessment the petitioner was called upon to furnish various details in support of the return of income including the details of Tax Deduction at Source (TDS) as claimed by the assessee. Mr.Jayakumar, learned counsel for the petitioner very fairly submitted that

the details sought for in regard to TDS on payments made to the respondent in the relevant financial year were not furnished to the Assessing Officer.

4. While this is so, a notice under Section 148 of the Income Tax Act dated 28.09.2016 was issued and reasons for re-assessment sought for by the petitioner. In line with the judgment in the case of GKN Driveshafts (India) Ltd., Vs. Income Tax Officer [(2003) 259 ITR 19 (SC)], reasons were supplied and the same read as follows.

> 'During the course the assessment proceedings for the previous year relevant to the Assessment Year 2012-13, the assessee has made payment of interest to the financial institution of Rs.37,83,391/- for which the tax has not been deducted at source by the assessee company. The non deduction of TDS on interest payment will attract disallowance as per Sec.40 (a)(ia) of the IT Act.'

5. The assessee pointed out that the very issue relating to interest of Rs.37,83,391/- paid by the assessee to three NBFC's on which TDS has not been made, had, infact, been been raised by the Department by way of proceedings under Section 154 of the Act, in January 2016. The petitioner had explained, vide letter dated 18.02.2016 that the deductee company had reckoned as its income the entire interest paid by the petitioner and had also issued requisite certificate in Annexure A under the proviso to Section 201 (1) of the Act that the petitioner has annexed along with its explanation.

6. Reliance was placed upon the Judgement of the Supreme Court in the case of Hindustan Coco Cola Beverages (P) Ltd V. CIT [(2007) 163 Taxman 355 (SC)] as well as the circular issued by the CBDT vide Circular No.275/201/95-IT(B) dated 29.01.1997.

7. The 154 proceedings appear to have been dropped thereafter, as revealed from the counter filed.

8. Further, the benefit of the provision section 40 (a) (ia) inserted by Finance Act, 2012 with effect from 01.04.2013 would also be available to the petitioner in the present case. Both the aforesaid submissions have been rejected by the respondent in the impugned order NIL.

9. I am concerned solely with the assumption of jurisdiction by the respondent for reopening of the assessment. Prima facie the assessee appears to have produced all materials in regard to the issue of Tax Deduction Source before the Department in the course of 154 proceedings initiated in January

2016 as reiterated in the objection dated 16.08.2017. The petitioner has also stated that the deductees have offered the interest in their respective incomes. In such an event, the circular of the CBDT as well as the Judgement of the Supreme Court in Hindustan Coco Cola Beverages (P) Ltd are directly applicable as will be the amendment to Section 40(i)(ia) with effect from 01.04.2013, wherein the proviso stipulates that in cases where interest income has been offered to tax in the hands of recipients, no further demand shall be raised in the hands of the payer. This amendment has been held to be retrospective by a decision of the Delhi High Court in the case of Commissioner of Income Tax -1 V. Ansal Land Mark Township (P.) Ltd [(2015) 61 taxman 45 (Delhi)].

10. In the counter the Department states that Form 26(A) issued by the deductees was not available in file. In the trajectory of events as set out above, I direct the petitioner to participate in the proceedings for re-assesssment before the Assessing Officer. The Officer shall take into consideration the observations in this order in the course of finalizing the assessment proceedings after grant of opportunity of hearing to the petitioner.

11. The Writ Petition is disposed of in the above terms. Connected miscellaneous petition is also closed. No costs.
rkp

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To
The Assistant Commissioner of Income-tax,
Circle-2, Erode 638 001.

+1cc to Mr.A.P.Srinivas, Advocate, SR.No.26906

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Kak(02/07/2019)