IN THE HIGH COURT OF JUDICATURE OF MADRAS
DATED: 05.07.2019

CORAM:
THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.27438 of 2017
and
WPMP.No.29327 of 2017

Shri Nallagonda Venkata Lakshmi
Narasimha Prasaad,
25, Kutchery Road,
Mylapore,
Chennai-600 004. ...Petitioner

Vs.

The Assistant Commissioner of
Income Tax,
Non-Corporate Circle-21,
Room No.420, 4th Floor,
New Block, Aayakar Bhavan,
121, Mahatma Gandhi Road,
Chennai-600 034. ...Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, calling for the records in AADPP4798D/Reply to Objections/NCC 21(1)/2017-18 dated 09.10.2017 on the file of the respondent relating to the Assessment Year 2012-13 and to quash the same.

For Petitioner : Mr.M.P.Senthil Kumar

For Respondent : Mrs.Hema Murali Krishnan
Sr. Standing Counsel

O R D E R

When the respondent had issued a notice dated 28.12.2016 under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') giving reasons for reassessment for the Assessment Year 2012-13 and proposing to withdraw the deduction allowed under Section 54 (F) of the Act, the petitioner herein had given a detailed reply with a request to drop the reopened proceedings, substantiating that the claim for deduction under Section 54(F) was in order. Pursuant to the reply, the impugned order dated 09.10.2017, came to be passed rejecting the objections raised by the petitioner. The said rejection order dated 09.10.2017 is under challenge in the present Writ Petition.

2. Heard Mr.M.P.Senthil Kumar, learned counsel for the petitioner and Mrs.Hema Muralikrishnan, learned Senior Standing Counsel appearing on behalf of the respondent.

3. The main ground that arise for consideration in the present Writ Petition is that as to whether the respondent is justified in rejecting the objections to the notice under Section 148 of the Act without considering the merits raised by the Assessee? The learned counsel for the petitioner would submit that the respondent herein had proposed to withdraw the deduction allowed under Section 54(F) of the Act, on the ground that the assessee owns more than one residential house on the date of transfer of the original asset, whereas, the fact remains that the petitioner was in possession of only one residential house during the relevant sale and therefore, the assessee was entitled for deduction under Section 54(F) of the Act.

4. The learned Senior Standing counsel for the respondent, on the other hand submitted that, what was required to be considered by the respondent when the objections are raised is as to whether there was sufficient reasons to reopen such assessment and that the merits of the reasons assigned can be gone into by the Assessing Officer only at the time of assessment. The learned Senior Standing counsel further submitted that though the objections has been rejected, it is always open to the assessee to raise the objections subsequently when the reassessment is made and before the Appellate Authority also. She further submitted that the Writ Petition is not maintainable and hence, the prayer sought for in the Writ Petition does not require any consideration.

5. I have given careful consideration to the submissions made by the respective counsels.

6. It is submitted that originally when objections were raised to a notice issued under Section 148 of the Act, such objections were considered along with the reassessment proceedings. Subsequently, when the Hon'ble Apex Court in the case of GKN Driveshafts (India) Ltd., Vs. Income Tax Officer & others reported in 2002 (125) Taxmann 963 (SC) had clarified that when the assessee seeks for reasons for issuing a notice under Section 148 of the Act, the Assessing Officer is bound to furnish the reasons and afford an opportunity to the assessee to file his objections to such reasoning and these objections are bound to be disposed of by the Assessing Officer, through a speaking order.

7. In view of the decision in GKN Driveshafts (I) Ltd., case (supra), the procedure adopted by the Assessing Officer had gained significance, who thereafter had commenced to pass a

preliminary order on the objections raised to the reasons set forth in the notice under Section 148 of the Act. In GKN Driveshafts (I) Ltd. case, the Hon'ble Apex Court had only stressed on the provisions to Section 148 (1) & (2), which mandates service of notice regarding the reasons therein for such assessment, reassessment or re-computation. The provision was further clarified to the effect that the assessee is at liberty to seek for reasons fro reassessment and the Assessing Officer was required to pass a speaking order on the objections raised by the assessee. As per the said clarification made in the said decision, when a notice under Section 148 of the Act is issued, the following procedure requires to be adopted:

> a) The assessee is required to file a return, if any;
>
> b) If the notice does not spell out the reasons for the reassessment, the assessee can seek for reasons for issuing such a notice;
>
> c) On receipt of a request from the assessee, the Assessing Officer is bound to furnish the reason for issuing the notice under Section 148 of the Act;
>
> d) The assessee shall thereupon be entitled to file his objections for the issuance of notice; and
>
> e) The Assessing Officer is bound to dispose of the objections through a speaking order.

The clarification in GKN Driveshafts (I) Ltd., case is a reiteration of the procedure under Section 148 of the Act, which the Assessing Officer is bound to follow.

8. If the submissions of the learned Senior Standing counsel for the Department is to be accepted that the Assessing Officer was required only to justify his action of reopening the assessment through his notice under Section 148 of the Act, while considering the objections raised by the assessee, it would nullify the clarification issued in GKN Driveshafts (I) Ltd., case. In other words, when the Hon'ble Apex Court had in a clear and categorical terms spelt out that the Assessing Officer is bound to dispose of the objections of the assessee through a "speaking order", there is a duty casts on the Assessing Officer to consider each and every objections raised by the assessee in his reply to the notice under Section 148. A speaking order is not one which would run to a few pages quantitatively but, should be one which qualitatively addresses the objections in its substance. Therefore, when the assessee raises few objections in his reply, every such objection should be met by the Assessing Officer in order to qualify himself of having passed a speaking order. In this context, the submission of the learned Senior Standing counsel that the reasons cited in the notice under Section 148 or the objections raised by the

assessee could be later gone into by the Assessing Officer at the time of re-computation cannot be countenanced.

9. There is no appeal provided under the Act as against the order rejecting the objections to the notice under Section 148 of the Act. While that being so, when the assessee is of the view that such an order suffers from perversity or illegality or is in violation of the principles of natural justice, the option available to such an assessee would be to invoke Article 226 of the Constitution of India. Hence, the Writ Petition initiated by the petitioner herein can held to be maintainable.

10. It would not be out of place to mention here that when there is a duty cast on the Assessing Officer to pass a speaking order on the entire objections raised by the assessee, it would be incumbent on the part of the Assessing Officer to also give detailed reasons for reopening the assessment in his notice under Section 148 of the Act. Otherwise, the observations made by the Hon'ble Apex Court in GKN Driveshafts (I) Ltd., case, may become futile, since the assessee may not be in a position to effectively raise his objections nor would it assist the Assessing officer to have his doubts clarified.

11. In the instant case, the reason assigned by the Assessing Officer for proposing to withdraw the deduction allowed under Section 54(F) of the Act is that the assessee owns more than one residential house on the date of transfer of the original asset. In his objections dated 12.01.2017, the assessee had attempted to clarify that he did not own more than one residential house at the time of sale of the original asset. This specific objection has been overruled by the Assessing Officer in the impugned order dated 09.10.2017, not only without assigning any reasons but also with an observation that there was no iota of doubt that the assessee owns more than two residential property on the date of sale. In the absence of consideration of the objections raised by the petitioner in the impugned order, it cannot be said that the impugned order is a speaking order and consequently, the order is in contravention of the rulings in GKN Driveshafts (I) Ltd., case (supra).

12. For the foregoing reasons, this Court is of the considered view that it would be appropriate to remit the matter back to the respondent for proper consideration of the objections and to pass a speaking order, as held in GKN Driveshafts (I) Ltd., case. Consequently, the impugned order of the respondent dated 09.07.2017 is hereby set aside and the matter is remanded back to the respondent herein for fresh consideration of the petitioner's objections dated 12.01.2017 for the purpose of passing a speaking order, after giving due opportunity of personal hearing to the petitioner. Such an exercise shall be completed, within a period of six weeks from

the date of receipt of a copy of this order. Accordingly, the Writ Petition stands disposed of. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

DP

To

The Assistant Commissioner of
Income Tax,
Non-Corporate Circle-21,
Room No.420, 4th Floor,
New Block, Aayakar Bhavan,
121, Mahatma Gandhi Road,
Chennai-600 034.

+1cc to M/s.Hema Muralikrishnan, Advocate, S.R.No.50721

+1cc to Mr.G.Baskar, Advocate, S.R.No.56683

W.P.No.27438 of 2017
and
WPMP.No.29327 of 2017

RSI(CO)

RRS(06/08/2019)