

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 30.09.2019

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.No.32616 of 2018
and W.M.P.No.37819 of 2018

M/s.Redington India Ltd.,
95, SPL Guindy House,
Chennai - 600 032
represented by its Vice President-Taxation
Mr.V.Ramesh ...Petitioner

Vs.

The Assistant Commissioner of Income Tax,
Corporate Circle - 5(1),
No.121, M.G.Road,
Chennai - 34. ...Respondent

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the respondent and quash the impugned notice u/s.148 of the Act in ITBA/AST/S/148/2017-18/1009578651(1) in PAN No.AABCR0347P dated 30.03.2018 for the assessment year 2011-12 and the consequential Order dated 09.10.2018 in PAN No.AABCR0347P and direct the Respondent to drop the reassessment proceedings for the assessment year 2011-12.

For Petitioner : Mr.Vikram Vijayaraghavan
for M/s.Subbaraya Aiyar

For Respondent : Mrs.Hema Mualikrishnan
Senior Standing Counsel

O R D E R

The present Writ Petition is filed challenging the notice issued under Section 148 of the Income Tax Act dated 30.03.2018 and the consequential order dated 09.10.2018 rejecting the objections filed by the petitioner against the reasons for reopening the assessment. Consequently, the petitioner seeks for a direction to the respondent to drop the re-assessment

proceedings. The relevant assessment year is 2011-12.

2. The case of the petitioner in short is as follows:

It is engaged in the business of distribution of information technology products, telecom products, consumer durables and after sales services. For the assessment year 2011-12, the petitioner filed its return of income on 29.11.2011 and further a revised return on 30.03.2013. The case was selected for scrutiny and notice under section 143(2) dated 12.08.2013 and notice under section 142(1) dated 13.02.2015 were issued. The case was referred to Transfer Pricing Officer(TPO) under section 92CA of the Act for computation of Arms Length Price in relation to international transaction. The Transfer Pricing Officer passed an order under section 92CA(3) dated 28.01.2015 suggesting an upward adjustment. The petitioner, through their letter dated 19.03.2015, informed its proposal to file objections with the Dispute Resolution Panel(DRP). The respondent passed the draft Assessment Order dated 23.03.2015 under Section 143(3) read with Section 92CA read with Section 144C(1), determining the assessed income by adding the adjustments as suggested by Transfer Pricing Officer and making disallowance under section 14A. As against the addition and disallowance made in the draft assessment order, the petitioner filed their objections before the Dispute Resolution Panel. By order dated 22.12.2015, the Dispute Resolution Panel directed the Transfer Pricing Officer to delete the upward adjustment in respect of old corporate guarantee and rejected the objections raised by the petitioner in relation to fresh corporate guarantee. The Dispute Resolution Panel sustained the downward adjustment with regard to trade mark fees and the disallowance made under section 14A. Consequently, the respondent passed a final assessment order under section 143(3) read with 92CA r/w section 144C(1) on 05.02.2016 determining the total income. Challenging the said final assessment order, the petitioner filed an appeal before the Income Tax Appellate Tribunal. The Tribunal, by its order dated 18.10.2016, deleted the adjustment made towards Corporate Guarantee and Trademark license fee and remanded back the issue to consider Section 14A disallowance. The respondent passed the giving effect order dated 29.03.2017 allowing the above section 14A disallowance. The survey under section 133A of the Act was conducted on 12th and 13th December 2017 in the premises of the petitioner. The respondent sought to reopen the assessment under section 147, by issuing notice under section 148 dated 30.03.2018. The petitioner filed their reply dated 03.05.2018 informing that the time limit for issuing notice for re-assessment would expire on 31.03.2018, whereas the notice under section 148 was issued on 02.04.2018 and the same was received by the petitioner on

03.04.2018. The respondent vide letter dated 19.07.2018 furnished the reasons for reopening the assessment. The petitioner, through letter dated 14.09.2018, submitted their objections against the reasons for reopening. The respondent, however, passed the order on 09.10.2018 rejecting the objections, which is non-speaking.

3. The respondent filed a counter affidavit wherein it is stated as follows:

It is wrong to state that notice under Section 148 was issued on 02.04.2018. On the other hand, it was issued on 30.03.2018, also by e-mail on the very same day. Therefore, the notice was issued within the period of limitation. The reasons were furnished to the petitioner and their objections were also disposed of by the respondent on 09.10.2018. Therefore, the mandate of the Hon'ble Supreme Court stipulated in GKN Driveshafts India Pvt.Ltd. case (259 ITR 19 (SC)) has been complied with.

4. Learned counsel for the petitioner contended that the impugned reopening is hopelessly barred by limitation as the same was issued not only beyond the period of four years but also beyond the period of six years. He further contended that the reply/objections filed by the petitioner to the reasons for reopening were not considered by passing a speaking order. Therefore, he submitted that the respondent has failed to follow the procedure laid down by the Supreme court in GKN Driveshafts India Pvt.Ltd. case.

5. On the other hand, the learned Senior Standing Counsel for the respondent submitted that the objections filed by the petitioner against the reasons for reopening were considered and thus, the impugned order dated 09.10.2018 rejecting those objections was passed. She further submitted that though it is not stated in so many words, the respondent has stated that the business activities are carried out in India by Redington India P.Ltd. employees on behalf of RDPL, Singapore and that the RDPL has earned profits from India and such conclusion was arrived at based on information and analysis of financial RDPL, Singapore.

6. Heard both sides. Perused the materials placed before this Court.

7. The impugned proceedings is for reopening the assessment for the relevant assessment year 2011-12. A notice dated 30.03.2018 was issued to the petitioner under section 148 of the Income Tax Act, 1961. Further, the reasons for reopening the

assessment were furnished through proceedings dated 19.07.2018, which only reads as follows:

"As the assessee failed to furnish the true and correct details of income and expenditure incurred I have reasons to believe that income chargeable to tax has escaped assessment"

8. It is seen that on receipt of such reasons, the petitioner has filed their objections in detail on 14.09.2018. The said reasons were rejected/ disposed of on 09.10.2018 by passing the following order.

"The notice for reopening the assessment was dispatched by e-mail on 30.03.2018 and by speed post on 31.03.2018.

Further, based on information and analysis of financials of RDPL Singapore, the RDPL has earned profits from India and business activities are carried out in India by Redington India employees on behalf of RDPL."

9. A bare perusal of the above proceedings would undoubtedly indicate that the respondent, while rejecting the objections raised by the petitioner, has not passed a speaking order and on the other hand, rejected the same with a single line observation as discussed supra.

10. In my considered view, such order of rejection of the objections is not in conformity with the law laid down by the Apex Court in GKN Driveshafts India Pvt.Ltd. case reported in 259 ITR 19 (SC) wherein it is observed as follows:

The assessing officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the noticee is entitled to file objections to issuance of notice and the assessing officer is bound to dispose of the same by passing a speaking order. In the instant case, as the reasons have been disclosed in these proceedings, the assessing officer has to dispose of the objections, if filed, by passing a speaking order, before proceeding with the assessment in respect of the abovesaid five assessment years.

11. Considering the fact that the order dated 09.10.2018 rejecting the objections is not a speaking order, this Court is inclined to remit the matter back to the respondent for passing a speaking order, however, by not expressing any view on the merits of the claim made by the respective parties including the limitation issue.

12. Accordingly, this Writ Petition is allowed in part and the impugned order dated 09.10.2018 alone is set aside and the matter is remitted back to the Assessing Officer to pass a speaking order on the objections filed by the petitioner against the reasons for reopening. Such order shall be passed within a period of three weeks from the date of receipt of a copy of this order. Since this Writ Petition is allowed in part only for the purpose of remitting the matter back to the Assessing Officer to pass a speaking order as stated supra, all other questions raised in this writ petition by the petitioner including the limitation are left open to be agitated at appropriate stage, if it is so warranted. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

vsi

To
The Assistant Commissioner of Income Tax,
Corporate Circle - 5(1),
No.121, M.G.Road,
Chennai - 34.

+1 cc to Mrs.Hema Muralikrishnan Advocate sr83479
+1 cc to Mr.Subbaraya Diyar Padmanabhan Advocate sr83468

W.P.No.32616 of 2018

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