

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.10.2020

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.1212 & 1216 of 2020

WMP.No.1477 of 2020

Maya Appliances Private Limited,  
Represented by K.Uma Shankar, Senior Manager  
... Petitioner in both WPs

Vs.

1. Assistant Commissioner of Income Tax,  
Company Circle 4(1),  
Chennai Main Building, No.121,  
Mahatma Gandhi Road, Nungambakkam  
Chennai-600 034
2. Deputy Commissioner of Income Tax,  
Company Circle 4(1),  
No.121, Mahatma Gandhi Road,  
Nungambakkam Chennai-600 034.
3. Principal Commissioner of Income Tax-4  
No.121, Mahatma Gandhi Road,  
Nungambakkam Chennai-600 034
4. Union of India, Represented by Revenue Secretary,  
North Block, New Delhi-110 001  
... Respondents in all WPs

Prayer in WP No.1212 of 2020: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Certiorari calling for the final assessment order (Second Impugned Order) passed by the 1<sup>st</sup> respondent in u/S 143(3) r/w Section 147 in DIN 20121173482 dated 27.12.2019 for the AY 2012-13 and quash the same.

Prayer in WP No.1216 of 2020: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Certiorari calling for the records relating to the order disposing objections (First Impugned Order) passed by the 1<sup>st</sup> respondent in ITBA/AST/f/17/2019-20/1022914389(1) dated 23.12.2019 for the AY 2012-13 and quash the same.

For Petitioner: Mr.Ragavan Ramabadran  
(in both WP's)

For Respondents : Mrs.Hema Muralikrishnan,  
Senior Standing Counsel  
(in both WP's)

O R D E R

The petitioner has filed these two writ petitions, one challenging order dated 23.12.2019 rejecting the objections of the petitioner to the jurisdiction assumed by the respondent for proceedings in connection with re-assessment under the Income Tax Act, 1961 (in short 'Act') for Assessment Year 2012-13, and the second, the order of re-assessment dated 27.12.2019.

2. Proceedings for re-assessment have admittedly been initiated after a period of four years from the end of the relevant year and this is thus, a case, that attracts the proviso to Section 147 of the Act. The provision, to the extent to which it is relevant to this matter, is extracted below:

147. Income escaping assessment:

If the Assessing Officer<sup>3</sup> has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year).

Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year:

.....

3. Normally, the time limit for initiation of proceedings for assessment would be four years from the end of the relevant Assessment Year. An additional period of two (2) years is granted in those cases where the original assessment was completed under the provisions of Section 143(3) and the escapement of income has been occasioned on account of the non-filing of the return of income either under Section 139 or under Section 142 by an assessee or on account of the failure of the assessee to have made a full and true disclosure of income at the original instance.

4. In the present case, the petitioner has filed a return of income in time and therefore, the first two conditions are not attracted. The only issue to be examined is whether the alleged escapement of income, if any, is attributable to failure on account of the assessee/petitioner to have made a full and true disclosure of income in that regard. For this purpose, one would have to examine the reasons on the basis of which jurisdiction has been assumed, and test the same in the light of the enquiry conducted and the responses filed by the petitioner prior to the framing of the original scrutiny assessment.

5. Each issue in the reasons for re-assessment dated 08.03.2019 is extracted with the comparative position as regards the disclosure made by the petitioner at the time of original assessment, in seriatim, as under:

'Issue 1

In the assessment order disallowance u/s 14A of Rs.40,70,957 was made as per Rule 8D. The working is as under:

Rule 8D(ii) : 6,37,586

Rule 8D(iii) : 34,33,371

-----  
40,70,957  
-----

It is seen that assessee has already disallowed sum of Rs.81,43,316 being management expenses incurred in relation to exempted assets [sec Sch.1 of 'Statement of Income' r.w. Col 17(1) of Form 3CD audit report]. Hence disallowance u/s 14A in the assessment order needs to be restricted to Rs.6,37,586 being proportionate interest expenses as against Rs.40,70,957. Excess addition made of Rs.34,33,371 has to be deleted.

6. This issue has been raised by the Assessing Officer in questionnaire under Section 142(1) of the Act, where he calls for an explanation as to why expenditure was not disallowed under section 14A read with 8D of the Act. The petitioner has responded vide reply dated 14.11.2014 as follows:

'8) The actual expenses of Rs.81,43,316/- representing as management fees against the exempted Income u/s 10(34) of the Income Tax Act, 1961 has been disallowed in the statement of

Computation of Income. Kindly refer the computation of income submitted earlier.'

7. The second issue is as under:

Issue 2

As per Col. 27(b)(i) of Form 3CD audit report, TDS was not made u/s 194J in respect of payment of Rs.3,30,900 made towards fee for technical / professional services. However AO omitted to make disallowance of this sum u/s 40(a)(ia). The Excess deduction granted of Rs.3,30,900/- has to be disallowed.

8. This issue relates to alleged non-deduction of tax at source under Section 194J in respect of remittances towards fee for technical/professional services. This information has been sought for under communication dated 23.07.2014, where a copy of the memo of computation of income and all annexures thereto, being the balance sheet, profit and loss account, notes of audits, returns, statutory reports in Forms 3CD and various other details have been sought. The Form 3CD has been filed along with the return and along with schedule thereto supplied under cover of communication dated 19.09.2012. The schedule thereunder discloses the amounts upon which no tax was deducted under Section 194J as under:

... Tax not deducted Section 27(b) (i)

|   | Expense amount                                  | Tax deductible |           |
|---|-------------------------------------------------|----------------|-----------|
| 1 | 192: Salaries                                   | 2,72,00,000    | 26,53,00  |
| 2 | 194&: Fees for profession or technical services | 3,30,900       | 33,090    |
|   |                                                 |                | 26,83,090 |
|   | Total                                           | 2,75,30,900    | 0         |

9. The third issue and analysis thereof are as under:

Issue 3

Col. 16(b) of Form 3CD Audit report read with Ann shows that sum of Rs.49,412 collected from employees as PF contribution were not paid before the respective due dates. Employee's contribution to PF/ESI received by the employer is income in his hands as per sec. 2(24)(x). It is deductible only if paid within the due date as per the respective Act as specified in sec. 36(1)(va). The provisions of sec. 43B which is applicable in respect of employer's contribution is quite different than the provisions of sec. 36(1)(va).

The Excess deduction granted of Rs.49,412 has to be

10. Details of provident fund contribution were sought under notice dated 23.07.2014 by the Assessing Officer and have been supplied as a part of the Form 3CD at column No. 16 and the annexure thereto reading as under:

|       |                                                                                                                                                                                                                                                                    |                   |
|-------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|
| 16(1) | •Any sum paid to an employee as bonus or commission for services rendered, where such sum was otherwise payable to him as profits or dividend. (Section 36(1) (ii)                                                                                                 | NIL               |
| 2.    | •Any sum received from employees towards contributions to any provident fund or superannuation fund or any other fund mentioned in section 2(24) (x); and due date for payment and the actual date of payment to the concerned authorities under section 36(1) (va | (As per Annexure) |

11. Issue 4 is set below:

Issue 4.

As per the details of "Legal and Professional fees" incurred available on record, the following expenditure are not revenue in nature:

| Date     | Payment to       | Amount    | Particulars                |
|----------|------------------|-----------|----------------------------|
| 20-05-11 | HSB Partners     | 11,03,000 | Towards project Phoenix    |
| 26-08-11 | HSB Partners     | 5,51,500  | Towards project Phoenix    |
| 20-05-11 | HSB Partners     | 11,03,000 | Towards project Phoenix    |
| 06-06-11 | AlterEgoMgm.Con. | 11,03,000 | Assisting tr. With Philips |
| 01-12-11 | Durairajan       | 4,00,000  | Assisting tr. With Philips |
| 19-08-11 | HSB Partners     | 82,725    | Ag. With Credit Suisse     |

Total 43,43,225

It was omitted to consider the purpose for which such expenditure was incurred and to disallow it as being capital in nature.

12. Details of legal and provisional fees were sought under communication dated 26.12.2014 and have been supplied by the petitioner under communication dated 06.01.2015 and

Annexure containing the ledger extract for 'Legal & Professional Fee' at -Annexure-7 thereto.

13. Issue five and explanation filed originally are as follows:

Issue 5

In the P & L a/c assessee claimed deduction of Rs.1,09,51,936 being "Bike event expenses". In letter dated 06-01-15 assessee clarified that such expenditure was in the nature of CSR expenses. It is seen that incurring of CSR expenses became mandatory only by virtue of sec. 135 of the Companies Act, 2013 which was not in operation during the previous year. Mere fact that indirectly assessee earned goodwill of the general public does not imply that the expenditure was incurred for business purposes and such expenditure is not deductible u/s 37. Excess deduction granted of Rs.1,09,51,936/- has to be disallowed

14. Bike event expenses were sought under cover of communication dated 26.12.2014 and supplied vide reply dated 06.01.2015 as follows:

... During the previous year, we amended the "object Clause" in the Memorandum of the Company to include "Bike Event". It is a CSR activity involving the conduct of an Annual Training Camp to provide skills aimed at training motored two wheeler rides on safe and skilled riding on road and respect for traffic rules. Additionally, the program helps identify talented youngsters who can potentially be trained for representation in the arena of Motor Sports. Amount spent on this event has been booked under "Bike Event Expenses".

15. Issue 6 and explanation thereto are extracted below:

Issue 6

Sum of Rs.2,84,73,639 is debited to the P & L a/c under the head 'Employee benefit expenses' [Note 18] with the narration "Bonus, Leave encashment". As per letter dated 06-01-15 of assessee, such expenditure relates to amount due to ex-employees of "Prestige manufacturing" business carried on by the assessee which was transferred to Philips group in April, 2011. According to the assessee, such payment was made in F.Y. 2012-13 as a gesture of gratitude. Firstly, it is not an ascertained liability as on 31-03-2012 since the same is not payable as per any law in force in the country. Secondly such payments were not for the purpose of

Excess deduction granted : Rs.2,84,73,639. This has to be disallowed.

16. Employee benefit expenses were sought for on 26.12.2019 and supplied as follows:

5) Evidence for payment of bonus/leave encashment of Rs.284,74 lakhs- Annexure-6. During this year the business of "Maya Appliances P. Ltd" was sold to "Philips" on slump sale basis. As a final gesture of gratitude to the long serving employees and those who specifically contributed to critical challenges in our organization's history- a one-time parting Ex-gratia and Bonus was paid to key employees. Hence this looks abnormal when compared to previous year.

17. Issue 7 and explanation are as under:

Issue 7. While working out the Long term capital gains, it is seen that assessee excluded sum of Rs.27,77,75,000 from sale proceeds being amount held in escrow account. As per sec. 45(1), capital gain is taxable in the year in which transfer took place. Since there is no dispute that the transfer of kitchen appliances business took place in F.Y. 2011-12, the C.G. arising from such transaction is taxable in A.Y. 2012-13. In this case part of the consideration was kept in escrow account. This will not change the incidence of taxation u/s 45(1) of the Income tax Act. Long term Capital Gains escaped assessment is Rs.27,77,75,000.

18. A query relating to long term capital gains on slump sale has been raised by the Assessing Officer under cover of Notice dated 23.07.2014, to which the petitioner had replied on 18.08.2014 supplying a copy of agreement dated 11.04.2011 on 20.08.2015.

19. Thus, all issues based on which the impugned proceedings for re-assessment have been initiated emanate from the Return of income and accompanying annexures and have been noted even at the time of original proceeding. Queries have been raised by the officer even at that juncture and the petitioner has, admittedly, furnished explanations and details in response thereto. The reasons for re-assessment themselves fairly reveal that the assumption of jurisdiction is only based on materials already available on record and no new, tangible materials have been culled thereafter. There is no dispute on the position that the alleged escapement of income, if any, is not attributable to non-disclosure of material particulars by the petitioner. The conditions precedent in the proviso to Section 147 are clearly not attracted in this case.

20. The Supreme Court, in the case of ACIT vs ICICI Security Primary Dealership Ltd (348 ITR 299) considered the re-opening of an assessment beyond the period of four years confirming the quashing of the proceedings for re-assessment on the ground that there was a full disclosure of all material particulars in the return of income filed by the assessee. So too in this case. The Bench states thus:

'The assessee had disclosed full details in the Return of Income in the matter of its dealing in stocks and shares. According to the assessee, the loss incurred was a business loss, whereas, according to the Revenue, the loss incurred was a speculative loss. Rejection of the objections of the assessee to the re-opening of the assessment by the Assessing Officer vide his Order dated 23rd June, 2006, is clearly a change of opinion. In the circumstances, we are of the view that the order re-opening the assessment was not maintainable.'

21. These Writ Petitions are allowed and both the impugned order dated 23.12.2019 rejecting the objections of the petitioner as well as the order of re-assessment dated 27.12.2019 are quashed. Connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CS-VII)

//True copy//

Sub Assistant Registrar

ska

To

1. Assistant Commissioner of Income Tax,  
Company Circle 4(1),  
Chennai Main Building, No.121,  
Mahatma Gandhi Road, Nungambakkam  
Chennai-600 034

2. Deputy Commissioner of Income Tax,  
Company Circle 4(1),  
No.121, Mahatma Gandhi Road,  
Nungambakkam Chennai-600 0344

3. Principal Commissioner of Income Tax-4  
No.121, Mahatma Gandhi Road,  
Nungambakkam Chennai-600 034

4. Union of India, Represented by Revenue Secretary,  
Ministry of Revenue, New Delhi-110 001

+1cc to Mr.Mrs.Hema Muralikrishnan, Advocate SR.No.33364

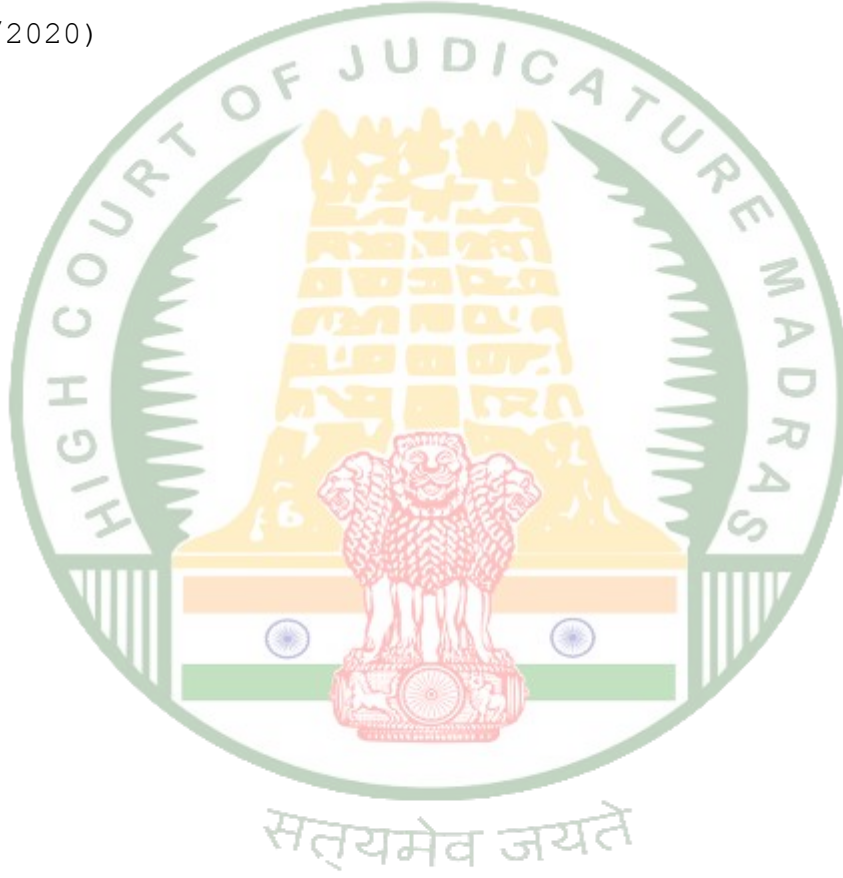
+2cc to Mr.Lakshmi Kumaran, Advocate SR.No.33368

W.P. No.1212 & 1216 of 2020

WMP.No.1477 of 2020

GMR (CO)

GMV (18/11/2020)



WEB COPY