IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.07.2020

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.2354 of 2020
and WMP.Nos.5326 & 2745 of 2020

M/s. Elektronik Lab
Known as Elektronik Lab India Private Limited,
Rep. by its Director Krishnan Nandakumar
No.10-A Massilamani Street, T.Nagar,
Chennai -600 017. .. Petitioner

Vs.

1.The Income Tax Officer,
Corporate Ward -2(1)
No. 121 M.G.Road,
Nungambakkam, Chennai 600 034.

2.Bank of Baroda,
R.K. Nagar Branch, Chennai -600 028.
.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying Writ of Certiorari to call for the records on the file of the 1st respondent passed in assessment order u/s.144 r.w.s.147 in ITBA/AST/M/147/2019-20/1023435193(1) PAN AABCE8131A dated 30.12.2019 for AY 2012-13 in pursuance to the notice u/s 148 dated 29.3.2019 and quash the same as illegal without jurisdiction authority of law and against the principles of natural justice and fair play.

For Petitioner : Mr.Pramod Kumar Chopda
For Respondents : Mrs.Hema Muralikrishnan
Senior Standing Counsel

O R D E R

Heard Mr.T.Pramod Kumar Chopda, learned counsel for the petitioner and Mrs.Hema Muralikrishnan, learned Senior Standing Counsel for the respondents.

2. The challenge is to an order of re-assessment dated 30.12.2019 passed for the Assessment Year 2012-13 (A.Y. 2012-13) in terms of the provisions of the Income Tax Act, 1961 (in short 'Act').

3. The first argument advanced by the learned counsel for the petitioner is that that the notice under Section 148 dated 29.03.2019 and addressed to 'M/s. Elektronik Lab India Private Limited', a limited company, quotes a non-existing Permanent Account Number (PAN), being AABCE8131A. Thus, according to him, the very basis of the proceedings for re-assessment stand vitiated. He would also fairly state the following facts:

(i) The petitioner is a limited company in which the deponent in affidavit, Krishnan Nandakumar, is a director. The company holds a PAN being AADCE2492E.

(ii) Krishnan Nandakumar holds a PAN in his individual capacity being AAEPN5577B.

(iii) In addition, he manages a sole proprietorship, namely Tvl.Elektronik Lab that, in 2008, had been applied for and had been issued a separate PAN by the department that had not been utilised by the petitioner.

4. On merits, the addition pertains to alleged interest earned on bank deposits. The petitioner questions the existence of the very bank accounts and consequently the interest said to arise therefrom. He points out that multiple requests were made before the Officer for a statement of tax deduction to substantiate the allegation of earning of interest, and such details/statement was never supplied by the Officer.

5. The arguments thus proceed along with three lines: firstly, misquoting of PAN number of the assessee/petitioner, secondly, error in computation of the interest income and thirdly, violation of the principles of natural justice. Learned counsel also points out that the show cause notice issued prior to completion of assessment only proposes the addition of a sum of Rs.13,57,785/- as income from other sources whereas the order of assessment brings to tax a sum of Rs.16,47,540/-. He also

alleges that credit has not been given to the tax deducted at source.

6. It is relevant to note that the petitioner has not filed a return of income in pursuance to notice under Section 148 of the Act, as it is statutorily required to. This is explained away saying that in the era of e-filing, the return of income, even if an attempt had been made to file it, would not have been accepted by virtue of the mismatch in PAN, the correct PAN of the petitioner/assessee and the wrong PAN quoted in the order of assessment. However, this explanation ought to have been offered before the Assessing Officer immediately upon receipt of the notice under section 148 but has omitted to be done.

7. The proper procedure in the matter of re-assessments has been set out by the Supreme Court in the case of GKN Driveshafts (India) Ltd. V. Income Tax Officer (259 ITR 19) in the following terms:

> We see no justifiable reason to interfere with the order under challenge. However, we clarify that when a notice under Section 148 of the Income tax Act is issued, the proper course of action for the noticee is to file return and if he so desires, to seek reasons for issuing notices. 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.

8. Thus, it is incumbent upon the assessee to file a return of income in response to a notice under section 148 or to state that the return filed earlier should be taken to have been filed in compliance to the notice. The petitioner has done neither. I am also not inclined to accept the explanation offered now in this regard, to the effect that the mismatch in PAN would have stood in the way of the return being accepted online, as it does not figure either in the correspondence inter se the petitioner and the Department or in the affidavit filed in support of the writ petition, and is made only orally and I thus believe that the same is an afterthought.

9. This Court sitting under Article 226 of the Constitution of India is not expected to resolve factual issues and errors arising out of multiplicity of PANs, particularly when the assessee/petitioner had admittedly applied for and obtained separate PAN numbers voluntarily. There is thus every possibility that the multiplicity of PANs has given rise to the confusion/error, if any, in the case.

10. In the light of the discussion as aforesaid, I am inclined to relegate the petitioner to statutory appeal. Since the petitioner expresses apprehension that on account of technical glitches, he would be unable to file the appeal, the petitioner is permitted to file an appeal manually and such appeal, if filed within a period of four (4) weeks from today, will be accepted by the Officer of the Commissioner of Income Tax (Appeals) holding jurisdiction in the matter. The petitioner is at liberty to raise all grounds before the first Appellate Authority, both on the aspect of assumption of jurisdiction as well as merits.

11. Taking note of the facts and circumstances as above, I am also inclined to direct that no recovery of the disputed demand be effected till disposal of appeal by the Commissioner of Income Tax (Appeals).

12. This writ petition is disposed upholding the order of assessment. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Asst.Registrar (CS III )

/true copy

Sub Asst. Registrar

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To
1.The Income Tax Officer,
Corporate Ward -2(1)
No. 121 M.G.Road,
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2.Bank of Baroda,
R.K. Nagar Branch, Chennai -600 028.

+1 cc to M/s.T.Pramd kumar Chopda Advocate sr25666

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aa18/08/2020