IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.02.2020

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

Writ Petition Nos.2945 and 27805 of 2019

and WMP Nos.3215 and 27348 of 2019

M/s.B.G.Electric Company
rep. by its Partner,
INDERCHAND MIMANI
New No.8, Old No.25,
Kalathi Pillai Street, Sowcarpet,
Chennai 600 079

.... Petitioner in both Wps.

Vs

1.Principal Commissioner of Income Tax-9,
2nd Floor, Tower-1, BSNL Building,
16, Greams Road, Chennai 600 006.

.. 1st respondent in W.P. No.2945 of 2019

2.The Income Tax Officer,
Non Corporate Ward-4(5),
2nd Floor, Tower -1, BSNL Building,
16, Greams Road, Chenni 600 006.

... 2nd respondent in W.P. No.2945 of 2019

...1st respondent in W.P.No.27805 of 2019

3.The Income Tax Office (CPC),
C/o Centralized Processing Centre,
Income Tax Department,
Post Bag No.1,
Electronic City Post Office,
Bangalore - 560 100.
... 3rd respondent in W.P. No.2945 of 2019

...2nd respondent in W.P.No.27805 of 2019

PRAYER in W.P. No.2945 of 2019: PETITION under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus to call for the records on the file of the 1st respondent in No.13/264/PCIT-9/2018-19 dated 1.1.2019 for the AY 2009-10 and quash the same as contrary to the law and against the principles of natural justice and fair play and direct the 2nd respondent to delete the disallowance of business expenditure of Rs.9,73,986/-.

PRAYER in W.P. No.27805 of 2019: PETITION under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari, to call for the records on the file of the 2nd respondent the assessment order passed in Communication Ref No.CPC/0910/15/1003623868 under PAN AAAFB0503D dated 07.09.2010 and consequential order passed in communication Ref No.CPC/0910/T5/1101519543 under PAN AAAFB0503D dated 18.05.2011 for the AY 2009-10 and quash the same as illegal, without authority of law and violative of ARticle 265 of Constitution of India.

For Petitioner : Mr.T.Pramodkumar Chopda in both WPs.

For Respondents : Mrs.Hema Muralikrishnan,
Senior Standing Counsel in both WPs.

C O M M O N O R D E R

Heard Mr.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 assessment for A.Y.2009-10 passed in terms of the Income Tax Act, 1961 (in short 'Act') and the sequence of dates and events are as follows:

(i) Return of income was filed within time.

(ii) An intimation was issued by the Central Processing Centre (CPC) under Section 143(1) of the Act on 07.09.2010.

(iii) The petitioner states that it had in the return of income erroneously reflected a figure of Rs.9,73,986/- as disallowance under Section 40A(2)(b) of the Act. This amount had been paid to related parties and was hence not liable to be disallowed.

(iv) The petitioner thus sought rectification under Section 154 of the Act.

(v) The CPC rejected the request for rectification on 18.05.2011. The reason for rejection is '.During the processing of the return under section 143(1), Profits and Gains from Business or Profession has been wrongly considered, however during rectification the same has not been corrected by the Assessee.'

(vi) It is unclear as to what the reason for rejection of the petition was and perhaps, what was meant was that a revised return ought to have been filed by the petitioner, reflecting the correct position in law.

(vii) Be that as it may, the petitioner sought rectification of mistake again on 18.07.2011, this time by way of a petition filed before the Assessing Officer specifically requesting an opportunity to produce records and explain the error apparent in the return of the income filed that was sought to be rectified.

(viii) There was no response to the aforesaid petition till a notice came to be issued on 11.11.2016 in terms of Section 221 (1) of the Act proposing penalty for non-payment of pending demands.

(ix) On 23.11.2016, the petitioner immediately brought to the notice of the Assessing Officer that the intimation giving rise to the demand was, in fact, pending rectification and enclosing a copy of the 154 petition filed.

(x) On 19.05.2017, the CPC again writes to the petitioner stating that 'your return for the above mentioned assessment year will henceforth be rectified by your Assessing Officer' . The petitioner was requested to contact the jurisdictional Assessing Officer for the request of rectification immediately.

(xi) Thus, on 08.06.2017, the petitioner approached the Assessing Officer enclosing copies of the return filed, 143(1) intimation and subsequent communications.

(xii) Even without hearing the petitioner, though the petitioner specifically sought an opportunity of hearing in letter dated 18.07.2011, an order has come to be passed on 11.07.2017 rejecting the application under Section 154.

(xiii) The petitioner sought revision of order dated 11.07.2017 on 23.10.2017 by way of an application under Section 264 before the Commissioner of Income Tax (CIT).

(xiv) The petition under Section 264 was rejected by way of the impugned order dated 01.01.2019, which does not appear to have been preceded with a notice. The decision is cryptic and reads as follows:

> 'I have carefully gone through the oral and written submissions of the assessee, as also the reports of the AO and the Joint Commissioner. The sole order under section 154 of the Act in this case had been passed on 18th May 2011. The revision petition filed on 7th November 2017 after the lapse of over six years is thus clearly not maintainable in terms of provisions of section 264(3) of the Act, which stipulate that a revision petition must be filed in a year from the date of communication of the order sought to be revised.'

3. In my considered view, the impugned order is clearly flawed insofar as the CIT has proceeded on the basis that the 154 order in this case was passed on 18.05.2011 and thus the revision petition was barred by limitation. He has completely lost sight of the subsequent request for rectification by the petitioner on 18.07.2011, that has been rejected by way of order dated 11.09.2017. The order also indicates complete non-application of mind to the sequence of dates and events as noticed by me above, apart from being wholly non-speaking.

4. Impugned order dated 01.01.2019 is thus set aside. The petitioner will be heard afresh on the Revision Petition under Section 264 filed by it and orders passed on merits and in accordance with law, within a period of four (4) weeks from date of receipt of a copy of this order.

5. As regards W.P.No.27805 of 2019, the petitioner has challenged intimation dated 07.09.2010. I am of the view that the said Writ Petition is not maintainable since the petitioner has, in fact, sought appropriate remedy against the same before the CIT under Section 264 of the Act, as considered by me in W.P.No.2945 of 2019.

6. In the light of the above, W.P.No.2945 of 2019 is allowed and W.P.No.27805 of 2019 is dismissed. No costs. Connected Miscellaneous Petitions are closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

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+2 ccs to M/s.Hemamuralikrishnan Advocate sr10809 & 11287

+2 ccs to Mr.Pramodkumar Chopda Advocate sr11088 & 11089

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aa07/07/2020