IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.24641 of 2011 and
M.P.No.1 of 2011

M/s.Swathi Organics & Specialities
Private Limited,
"Swathi Centre", No.5, Anandha Road,
Alwarpet, Chennai - 600 018.
Rep by its Managing Director,
Mr.K.Swaminathan. ... Petitioner

Vs.

The Assistant Commissioner of Income Tax,
Company Circle VI(4), 7th Floor,
New Block Room No.705,
121, Mahatma Gandhi Road,
Chennai - 600 034. ... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, Writ of Certiorarified Mandamus, to call for the records of the respondent, relating to the impugned Notice dated 24.03.2011 issued under Section 148 of the Act and the consequential assessment order dated 30.12.2011 and to quash the same and to consequently issue directions, forbearing the respondent herein from reopening the assessment for the assessment year 2004-2005, in as much as the same stand concluded vide assessment orders dated 13.12.2006 and 24.07.2007, passed by the Department.
(Prayer amended as per Court order dated 31.01.2012 by MJJ in M.P.No.1 of 2012 in W.P.No.24641 of 2011.)

For Petitioner : Mr.R.Umasuthan
For Respondent : Mr.A.P.Srinivas
Senior Standing Counsel

O R D E R

Heard the learned counsel for the petitioner and the respondent. Originally the petitioner had challenged the impugned notice dated 24.03.2011 issued under Section 148 of the Income Tax Act, 1961 issued by the respondent seeking to reopen the completed assessment vide order dated 13.12.2006 and as revised by order dated 5.1.2007 under Section 154 of the Income Tax Act, 1961.

2.After the impugned notice was issued, the petitioner requested for reasons for reopening of the assessment vide letter dated 11.4.2011. By a communication dated 14.9.2011, the respondent furnished the reasons for reopening the assessment.

3.The reason given for reopening of the assessment was that the petitioner was allowed section 80 IB deduction on the job work undertaken by the petitioner and since same was not available for deduction under the aforesaid provision, it was construed that the petitioner had misrepresented while claiming deduction under Section 80 IB of the Income Tax Act, 1961.

4.The petitioner has relied upon the decision of the Hon'ble Supreme Court in the case of CIT vs. Kelvinator of India Ltd 256 ITR 1 and host of other decisions.

5.Pending disposal of the present Writ Petition the respondent has now passed the fresh order of assessment dated 13.12.2011 as the stay obtained by the petitioner on 31.1.2012 had expired even though the court had made it clear that the interim order was to continue until further orders and the case was posted on 13.2.2012 for filing counter. It appears a counter was also prepared by the respondent on 1.12.2011. However, the interim order which was originally granted on 31.1.2012 was thereafter restricted and extended from time to time and the last extension that was given on 24.1.2012 until 31.1.2012.

6.I have considered the request of the learned counsel for the petitioner and the respondent. Section 148 of the Income Tax Act, 1961 empowers and assessing officer to reopen the assessment if he has reasons to believe that income had escaped assessment. The notice to be issued under Section 148 of the Income Tax Act, 1961 has to satisfy the requirements of Section 149 to Section 153 of the Income Tax Act, 1961. The reasons for reopening assessment has to be communicated to an assessee in the light of the decision of the Hon'ble Supreme Court in GKN Drive Shafts India Vs. ITO 2003(1) SCC 72.

7.The Hon'ble Supreme Court has now made it mandatory for the assessing officer to furnish reasons within a reasonable time and on receipt of the reasons, a income tax assessee/ notice is entitled to file objection against issuance of notice. The Assessing Officer is bound to dispose the same by passing a speaking order.

8.The speaking order which was purportedly passed in terms of the decision of the Supreme Court in GKN Drive Shafts India Vs ITO 2003 (1) SCC 72 is neither an order under Section 147 of the Income Tax Act, 1961 nor a proposal for reassessment under Section 148 of the Income Tax Act, 1961. It is in between and therefore results in denial of proper opportunity for the respondent to pass appropriate orders under Section 147 of the Income Tax Act, 1961.

9.Since the respondent has passed the impugned order without waiting for final disposal of the Writ Petition on 13.12.2011 apprehending the time for passing orders would expire on 31.12.2011, I am of the view the impugned order is liable to be set aside and the case is remitted back to the respondent to pass appropriate order keeping in mind the rights of the petitioner and well-settled principles of law.

10.Therefore, the respondent can proceed pursuant to impugned notice dated 24.03.2011 only if there was a failure on the part of the petitioner to truly and fully disclose all material facts relevant for the assessment. If there is a change of opinion, the respondent is obliged to drop the preceding in the light of the decision of the Hon'ble Supreme Court in Kelvinator of India Ltd's case referred to supra.

11.Under these circumstances, the impugned order dated 30.12.2011 stands quashed and the case is remitted back to the respondent to pass a speaking order on merits within a period of 45 days from date of receipt of this order. Needless to state before passing such order is the respondent is expected to call upon the petitioner for a personal hearing.

12.Such order which is to be an appealable order. However, it falls short of the test laid down by the Hon'ble Supreme Court in Kelvinator of India Ltd's case referred to supra, the jurisdiction of this Court under Article 226 of the Constitution of India is always available to the petitioner.

13.The Writ Petition stands disposed with the above observation. No cost. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

The Assistant Commissioner of Income Tax,
Company Circle VI(4), 7th Floor,
New Block Room No.705, 121, Mahatma Gandhi Road,
Chennai - 600 034.
+1cc to Mr.A.P. Srinivas, Advocate, S.R.No.4624

VGI(CO)
EU(24/06/2019)