IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2020

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 15212 of 2016
and
W.M.P. No. 13262 of 2016

M/s. Bharani Hospitals Pvt. Ltd.
Represented by its Director
22, Arcot Road
Saligramamam
Chennai – 600 093. ... Petitioner

-vs-

The Income Tax Officer
Corporate Ward 1(2)
Room No. 614, 6th Floor
New Block, Aayakar Bhavan
121, MG. Road, Nungambakkam
Chenani – 600 034. ... Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records Respondent contained in its impugned assessment order passed under Section 143(3) read with Section 147 of the Income Tax Act, 1961 for the assessment year 2010-2011, for PAN No. AAACB2392P, dated 15.03.2016, and to quash the same, and to consequently forebear the Respondent or any of its subordinates, agents or any other person claiming under the Respondent from reassessing the Petitioner's income tax for the assessment year 2010-2011 under Section 147 of the Income Tax Act, 1961.

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For Petitioner : Mr. Suhrith Parthasarathy

For Respondents: Mrs. Hema Muralikrishnan
Standing Counsel

https://hcservices.ecourts.gov.in/hcservices/

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O R D E R

(through video conference)

Heard Mr. Suhrith Parthasarathy, Learned Counsel for the Petitioner and Mrs. Hema Muralikrishnan, Learned Counsel appearing for the Respondent and perused the materials placed on record, apart from the pleadings of the parties, apart from the pleadings of the parties.

2. The Petitioner had filed its return of income on 28.09.2010 in respect of the assessment year 2010-2011 for total income of Rs. Nil. The Respondent selected the return filed by the Petitioner for scrutiny under Section 143(2) of the Income Tax Act, 1961 (hereinafter referred to as 'the IT Act' for short) and issued a notice dated 21.09.2011 along with a questionnaire. The Petitioner claims to have appeared before the Respondent through its representative and produced various details and the Respondent assessed the details of the income of the Petitioner as Rs. 27,13,957/- and made a demand for payment of Rs. 4,62,360/- as income tax under Section 156 of the IT Act, against which the Petitioner is said to have filed appeal on 22.04.2013 before the Commissioner of Income Tax Appeals-III, Chennai, which was pending at the time of filing of the Writ Petition. After another incumbent had assumed the office of the Respondent, the Petitioner received a notice dated 24.03.2015 under Section 148 of the IT Act for the same assessment year 2010-2011. The Petitioner then by letter dated 13.04.2015 sought reasons from the Respondent for re-opening the assessment for that year and the Respondent by letter dated 12.10.2015 reproduced the reasons recorded for re-opening the assessment under Section 147 of the IT Act. The Petitioner claims to have sent its objections for such re-opening of the assessment by letter dated 23.10.2015, but without disposing the said objections, the Respondent had proceeded to re-assess the income tax liability of the Petitioner by Order in PAN No. AACB2392P dated 15.03.2016 and has held as follows:-

> " As per the lease agreement dated 02.07.2004, the property was let out to the following parties and the rental income specified thereon.

M/s. Vishaka Auto	Rs. 46,200 x 12 =	Rs. 5,54,400
M/s. Manipal Automobiles P Ltd	Rs. 76,000 x 12 =	Rs. 9,12,000
M/s. MPL Cars Ltd	Rs. 1,64,967 x =	Rs.19,79,610
Total Rental Income		= Rs. 34,46,010

But the assessee company have not admitted rental income in respect of the above properties which was an escaped income.

The assessment is completed by taking into consideration the above rental income as under.

M/s. Vishaka Auto	Rs. 46,200 x 12 =	Rs. 5,54,400
M/s. Manipal Automobiles P Ltd	Rs. 76,000 x 12 =	Rs. 9,12,000
M/s. MPL Cars Ltd	Rs. 1,64,967 x 12 =	Rs.19,79,610

Total Rental Income	= Rs. 34,46,010
Less: Deduction u/s 24(1) @ 30%	= Rs. 10,33,803
Assessed Rental Income	= Rs. 24,12,207

By considering the above, the assessment is completed as under.

Income assessed as per 143(3) order dated 21.03.2013	= Rs.27,13,954
Add: Rental Income (Discussed as above)	= Rs. 24,12,207
	= Rs. 51,26,161
Less: Brought Forward Loss of AY 2009-10	= Rs.18,72,925
Income assessed	= Rs.32,53,236

Tax thereon as per calculation sheet.
Demand Notice and calculation sheet enclosed.
Penal Proceedings u/s 27 (1) (c) of the Act is initiated separately."

The Petitioner has challenged the said order of re-assessment dated 15.03.2016 in this Writ Petition.

3. The grievance sought to be ventilated by the Petitioner is that when the Petitioner has filed objections for re-opening of the proceedings of re-assessment under Section 147 of the IT Act, it is incumbent upon the Respondent to consider the same and pass orders, and without carry out such exercise, the Respondent could not have proceeded to re-assess the income tax liability of the Petitioner, as done in this case. There is a substantial force in the aforesaid contentions raised by the Petitioner, which deserves acceptance, inasmuch as the failure to consider and pass orders on the objections of the Petitioner before proceeding to re-assess income tax liability of the

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Petitioner is clearly an infraction of the rule in laid down by the Hon'ble Supreme Court of India in GKN Driveshafts (India) Ltd., -vs- Income Tax Officer [(2003) 1 SCC 72]. In that view of the matter, the impugned order is set aside and the Respondent shall proceed from the stage of passing orders on the objections raised by the Petitioner in the letter 23.10.2015 for the re-opening of the assessment proceedings.

4. At this juncture, Learned Counsel for the Petitioner highlights that the lease agreements which had been entered by the Petitioner for renting its property to the tenants, viz., M/s. Vishaka Auto, M/s. Manipal Automobiles Pvt Ltd and M/s. MPL Cars Ltd., was for a period of 60 months from 02.07.2004, that was to end on 30.06.2009, but those leases had ceased even earlier and no rent had been received from the said tenants for the period from 01.04.2009 onwards. Having regard to these peculiar features involved in this case, it shall be incumbent upon the Respondent to afford opportunity of personal hearing to the Petitioner to substantiate its contention in that regard and if necessary, verify the correctness of the same by calling for the audited accounts and income tax returns of those tenants for that purpose in the manner prescribed by law. The Respondent shall thereafter pass reasoned orders on merits and in accordance with law dealing with each of the contentions raised and communicate the decision taken to the Petitioner under written acknowledgment.

In the result, the Writ Petition is disposed on the aforesaid terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

The Income Tax Officer,
Corporate Ward 1(2),
Room No. 614, 6th Floor,
New Block, Aayakar Bhavan,
121, MG. Road, Nungambakkam,
Chenani - 600 034.

+1cc to M/s.Suhrith Parthasarathy, Advocate Sr.42148

W.P. No. 15212 of 2016

cnr[co]
srg 08/01/2021

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