



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2020

CORAM

THE HONOURABLE Dr. JUSTICE ANITA SUMANTH
W.P.Nos.3731, 3735, 3747 of 2020
and WMP.Nos.4403, 4405, 4407, 4410, 4412,
4415, 4428, 4430 & 4431 of 2020

Indo Lloyd Freight Systems Pvt. Ltd.,
Flat No.88, 8th Floor, BBC Villa,
New No.65(33), Broadway Road,
Chennai-600 108,
Represented by its Director,
Sudarshan K.Aithal

.. Petitioner in all WPs

Vs.

Income Tax Officer,
Corporate Ward 2(4),
Wanaparthi Block, No.121,
Mahatma Gandhi Road, Nungambakkam,
Chennai-600 034.

.. Respondent in all WPs

Common Prayer in WP.Nos.3731 & 3735 of 2020:- Writ Petitions filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the entire records of the Respondent contained in Notice dated 28.12.2019 bearing No.ITBA/PNL/S/271B/2019-20/1023338281(1), under Section 274 r/w Section 271B, and bearing No.ITBA/PNL/S/271(1)(c)/2019-20/1023337740(1) under Section 274 r/w S.271(1)(c) of the Act respectively in respect of PAN: AAACI3782L for AY 2013-14, and to quash the same as illegal, arbitrary and unjust.

Prayer in WP.No.3747 of 2020:- Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the entire records of the Respondent contained impugned notice bearing No.ITBA/AST/S/148/2018-19/1015457693(1) dated 27.03.2019 issued under Section 148 of the Income Tax Act, 1961 for PAN: AAACI3782L for Assessment Year 2012-13 and all consequential orders issued thereto, including the notice bearing No.ITBA/PNL/S/271B/2019-20/1023335833(1) dated 28.12.2019 under Section 274 r/w Section 271B of the Act, and notice bearing No.ITBA/PNL/S/271(1)(c)/2019-20/1023335141(1) dated 28.12.2019 under Section 274 r/w 271(1)(c) of the Act by the Respondent and to quash the same as arbitrary, unjust and illegal and to consequently forbear the Respondent or any of its superiors,



subordinates, agents or any other person claiming under or above the Respondent, from in any manner taking any steps to re-assess the Petitioner's income for the assessment year 2012-13 under Section 147 of the Income Tax Act, 1961.

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(In all WPs)

For Petitioner : Mr.Suhrith Parthasarathy

For Respondent : Mrs.Hema Muralikrishnan
Senior Standing Counsel

COMMON ORDER

Heard Mr.Suhrith Parthasaraathy, learned counsel appearing for the petitioner and Mrs.Hema Muralikrishnan, learned Senior Standing Counsel appearing for the respondent.

2.The petitioner challenges, in WP.No.3747 of 2020, a notice under Section 148 dated 27.03.2019 for assessment year (AY) 2012-13 and all consequential orders and notices including penalty notices for that year. As far as Writ Petition No.3731 of 2020 is concerned, the petitioner challenges penalty notices under Section 274 read with Section 271B dated 28.12.2019 for AY 2013-14. Since the facts vary for each year, they are dealt with separately.

3.As regards AY 2012-13, a notice under Section 148 dated 27.03.2018 was received by the petitioner and return filed for the first time on 26.04.2019. Thereafter, a notice under Section 143(2) dated 30.08.2019 was issued by the respondent followed by a questionnaire under Section 142(1) dated 17.09.2019. Responses were duly filed and there was exchange of communication back and forth between the petitioner and respondent. For the first time on 02.11.2019, the petitioner sought the reasons for re-assessment.

4.The Supreme Court has set out the procedure for re-assessment in the case of GKN Driveshafts (India) Ltd. vs. Income Tax Officer and Others (259 ITR 19) as follows:

4. 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



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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.

5. Thus, when a notice under Section 148 is received, the petitioner must file a return of income and then seek a copy of the reasons on the basis of which the re-opening was occasioned. In the present case, though the petitioner has filed a return no reasons were sought. The assessing authority proceeded to issue a notice under Section 143(2) as well as questionnaires calling for information from the assessee. The assessee has also duly complied with the requests. It is for the first time on 02.11.2019 that the petitioner has sought reasons. No doubt this request has been ignored by the assessing authority who even thereafter sought further information that was duly supplied by the assessee. This has culminated an order of assessment, that has not been uploaded in the online portal till date. The order of assessment in hard copy appears to have been returned to the Department with the endorsement 'left', since the petitioner has shifted its premises.

6. The learned Senior Standing Counsel circulates Instructions issued by the Directorate of Income Tax (Systems) in relation to uploading of time barring assessment orders in the following terms:

'Sub:- Passing of Time Barring Assessment Orders through Manual Order Upload Functionality in ITBA - reg.

Kindly refer to the above.

2. For the T.B. date 31.12.2019 there would be many Manual Order Upload cases, like, assessment order u/s 153A/153C/147 for the A. Yrs. 2016-17 and 2017-18, set-aside cases, etc. for which functionality in ITBA is still under development.

3. In above cases the pendency has to be created in ITBA. On completion of proceedings, order has to be passed manually. After generation of DIN for the relevant manual order, the order has to be uploaded on the system with DIN and then it is sent to the CPC for accounting. On completion of accounting by the CPC, its details are shared on the e-filing portal of the assessee.

4. In some cases there may be mismatch in the data of refund and/or challan shared by the AO through manual order upload and data of the same as per CPC and hence, the accounting may fail (error-out) at



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the end of CPC for such manual order.

5. In some computation result of manual order passed by the AO is different from the result of CPC accounting and the AO is also satisfied with the CPC accounting and the manual order has not been dispatched through any mode to the assessee, then the AO is advised to revise the computation sheet again and send the revised (corrected) computation sheet along with assessment order to the assessee.

6. In view of the approaching time barring date, and a large number of pendency with AOs, it would not be advisable to ask AOs where the accounting of manual order uploaded is repeatedly errored out (fails) at the end of CPC to examine the reasons for such failure of accounting and send the Assessment Order with enclosures of Computation of Income and tax thereon only after reconciliation/correction as flagged by CPC.

7. Therefore, the AOs may be advised in errored out cases discussed above, to pass the manual order, generate DIN from ITBA and after quoting DIN in the order, etc. send the same manually to assessee by post or otherwise. Then, the manual order passed should be uploaded in the system for accounting by the CPC. If after accounting, the net demand/refund is found to be different from the manually passed order communicated to the assessee, the relevant order may be rectified under the provisions of Act.

8. The AOs may further be advised to upload the relevant assessment order through Assessment-Work item only, so that, pending proceeding is closed in the system and the demand created manually is properly accounted in the system through manual order functionality. It is pertinent to mention here that any manual order uploaded through the Common Functions Module will not close the work-item proceeding and the resultant demand/refund will not appear in the system.

9. Furthermore, in order to avoid generation of multiple DIN for the same order, the AOs may be advised not to generate DIN from Common Function Module in place of Assessment Module - Manual Order functionality for uploading of such manual order.

10. The issues with the approval of the Pr. DGIT (S).'

7. Thus the procedure followed by the revenue in time barring assessments is that while the order may not be uploaded immediately, a DIN number is generated and the order of assessment sent manually. In the present case, the DIN number



appears to have been issued on 28.12.2019 and the assessment order in hard copy issued on the same date franked by the post office on 30.12.2019 and served upon the assessee on 02.01.2020, (though returned) with the endorsement 'left'. The assessment order, in original, is handed over to the learned counsel for the petitioner.

8. Since the order has been received only now, the petitioner is given thirty (30) days from today to file a statutory appeal, if it so desires. Recovery proceedings shall also commence after 30 days from today. The petitioner is directed to supply forthwith its present address for communication to the Department.

9. As regards assessment year 2012-13, the petitioner has not sought reasons at all. It has however received the order of assessment and is permitted to file an appeal challenging all aspects of the impugned order, within a period of thirty (30) days from today.

10. These writ petitions are disposed. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-

Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar

To

The Income Tax Officer,
Corporate Ward 2(4),
Wanaparthi Block, No.121,
Mahatma Gandhi Road, Nungambakkam,
Chennai-600 034.

+1 CC to Mr. Arun Karthick Mohan, Advocate sr 14018

+1 CC to Mrs. Hema Muralikrishnan, Advocate sr 13358.

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PVS (CO)
SP(14/07/2020)