IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	27.02.2020
Pronounced On	09.03.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.Nos.16217 to 16219 of 2016
and
W.M.P.Nos.14001 to 14003 of 2016

The Principal Officer,
M/s. RR Donnelley India Outsource Private Limited,
(Formerly known as Astron Document Management Private Limited),
Rep. by its Jyothi Prosad Bose, Director,
Son of Utsama Prosad Bose,
43A, Astron House,
1st Main Road, R A Puram,
Chennai - 600 028. ... Petitioner in All W.Ps.

Vs.

Deputy Commissioner of Income Tax,
Corporate Circle - 5 (2),
121, Nungambakkam High Road,
Chennai 600 034. ...Respondent in All W.Ps.

Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records in PAN:AABCH1990A dated 23.03.2016 relating to the Assessment Years 2003-04, 2004-05 and 2005-06 on the file of the respondent and quash the same.

For Petitioner : Mr.N.V.Balaji in all W.Ps
For Respondent : M/s.Hema Muralikrishnan Standing Counsel, in all W.Ps.

COMMON ORDER

In these Writ Petitions, the petitioner has challenged the impugned notices all dated 23.03.2016 issued under Section 148 of the Income Tax Act, 1961 seeking to reopen the assessment for the Assessment Years 2003-04, 2004-05 and 2005-06.

2. It is the cases of the petitioner that the assessment for these three Assessment Years, the petitioner had failed to deduct TDS under Chapter XVII-B of the Income Tax Act, 1961 and had therefore voluntarily added the same to the taxable turnover and claimed deduction under Section 10B of the Income Tax Act, 1961 applicable to newly established 100% Export Oriented undertaking.

3. During the Assessment Year 2006-07, the petitioner voluntarily paid TDS and claimed deduction under Section 40(a)(ia) of the Income Tax Act, 1961. On the aforesaid amount, the petitioner wanted to claim expenditure. The Assessing Officer had disallowed the same.

4. The Commissioner of Income Tax (Appeals) by an order dated 31.8.2012 directed the Assessing Officer to recompute the profit from the business eligible for deduction under Section 10B(4) for the earlier years by not increasing the profit due to disallowance under Section 40(a)(ia) of the Income Tax Act, 1961.

5. Aggrieved by the aforesaid order dated 31.08.2012 of the Commissioner of Income Tax (Appeals), the petitioner preferred an appeal before the Income Tax Appellate Tribunal.

6. The Income Tax Appellate Tribunal by its order dated 24.08.2015 upheld the aforesaid order of the Commissioner of Income Tax (Appeals).

7. The Income Tax Appellate Tribunal while upholding the order of the Commissioner of Income Tax (Appeals) however held that the order directing the computation of deduction under Section 10B will be subject to limitations provided under the Income Tax Act, 1961.

8. It is the contention of the petitioner that the order dated 31.08.2012 of the Commissioner of Income Tax (Appeals) had merged with the order dated 24.08.2015 of the Income Tax Appellate Tribunal and therefore it was not open for the respondent to invoke Section 148 in the light of Section 150(2) of the Income Tax Act, 1961.

9. In this connection learned counsel for the petitioner relied on the following decisions:-

i. Goldmine Investments Vs. Deputy Commissioner of Income Tax, order of this Court in Tax Case (Appeal) No.215 of 2008 and W.A.No.2108 of 2010 and T.C.(A) Nos. 448 and 452 of 2013, dated 29.11.2013.

ii. K.M.Sharma Vs. Income Tax Officer, (2002) 4 SCC 339.
iii. Union of India and Others Vs. Kamlakshi Finanace Corporation, AIR 1992 SC 711.
iv. Commissioner of Income Tax Vs. G.Viswanatham, (1988) 172 ITR 401.
v. Parveen Kumari and another Vs. Commissioner of Income-Tax and another, (1999) 237 ITR 339.
vi. Commissioner of Income Tax Vs. Vaikundom Rubber Co. Ltd., (2001) 249 ITR 19.
vii. Spences Hotels Pvt. Ltd. Vs. Deputy Commissioner of Income Tax, (2003) 263 ITR 263.
viii. Col. Sir Harinder Singh Brar Vs. Income Tax Officer, (2006) 282 ITR 371 (P&H).
ix. Commissioner of Income Tax Vs. Gem Plus Jewellery India Ltd., 2010 SCC OnLine Bom 2068.
x. Kunhayammed Vs. State of Kerala, (2000) 6 SCC 359.
xi. Commissioner of Income Tax Vs. Amritlal Bhogilal & Co., (1985) 34 ITR 130 (SC).
xii. Somnath Sahu Vs. The State of Orissa and Others, (1969) 3 SCC 384.
xiii. Gojer Bros. Pvt. Ltd. Vs. Ratan Lal Singh, (1974) 2 SCC 453.

10. It is the contention of the learned counsel for the petitioner that the last date for reopening the assessment, within the normal period of limitation, expired on 31st of March, 2008, 2009 and 2010 receptively for the respective Assessment Years.

11. Likewise, the last date for reopening the assessment for the purpose of 1st proviso to Section 147 of the Income Tax Act, 1961 expired on 31st March, 2010, 2011 and 2012 respectively and therefore invocation of Section 148 was barred under Section 154 (2) of the Income Tax Act, 1961.

12. Per contra, the learned counsel for the respondent would submit that the limitation is protected under Section 153 of the Income Tax Act, 1961 to reopen the assessment under Section 148 to give effect to the order of the Tribunal and that of the Commissioner of Income Tax (Appeals).

13. It is submitted that in any event, it is open for the petitioner to make the submissions before the respondent Assessing Officer and if the petitioner has a valid case, certainly the proceedings would be dropped.

14. It is submitted that the respondent could not implement the order dated 31.08.2015 of the Commissioner of Income Tax (Appeals) as both the petitioner and the respondent had preferred their respective appeals before the Income Tax Appellate Tribunal in I.T.A.No.2049/Mds./2012 and I.T.A.No.2064/Mds/2012 against the order dated 31.08.2012 of the Commissioner of Income Tax (Appeals).

15. I have considered the arguments advanced on behalf of the petitioner and the respondent.

16. The question that is required to be answered in the present writ petitions is whether the reopening of the assessment for the three Assessment Years would get time-barred in view of the order of the Income Tax Appellate Tribunal on 24.08.2015 or whether the order disposing the two appeals of the petitioner and the respondent had no bearing on the limitation.

17. The arguments advanced by the learned counsel for the petitioner that the order of the Commissioner of Income Tax (Appeals) dated 31.08.2012 had merged with the order dated 24.08.2019 passed by the Appellate Tribunal. However, merely because, the said order of the Commissioner of Income Tax (Appeals) had merged with the order of the Tribunal does not mean with order of the Commissioner of Income Tax (Appeals) could not be implemented and that there was a bar for re-opening the Assessment under Section 150(2) of the Income Tax Act, 1961.

18. As per sub-section 1 of Section 150 of the Income Tax Act, 1961, a notice under Section 148 of the Income Tax Act, 1961, can be issued notwithstanding anything contained in Section 149 of the Act for the purpose of making an assessment or re-assessment or recomputation in consequence of or to give effect to any finding or direction contained in an order passed by any authority in any proceeding under the Act by way of appeal, reference or revision or by a court in any proceeding under any other law.

19. Sub-Section 1 of Section 150 of the Income Tax Act, 1961 will not apply only where any assessment, re-assessment or recomputation in respect of which the assessment, re-assessment or recomputation could not have been made at the time the order which was the subject matter of appeal, reference or revision, as the case may be, was made by reason any other provision limiting the time within which any action for assessment, reassessment or recomputation could have been made.

20. In other words, the limitation under sub-Section 2 to Section 150 will apply only when the limitation had already

expired by the time before the assessment order for the Assessment Year 2006-07 was made. If not, there is a saving of limitation under Section 150(1) of the Income Tax Act, 1961. It is for this reason, the Income Tax Appellate Tribunal vide order dated 24.08.2015 held that such recomputation will be subject to limitation.

21. I therefore do not find any merits in the present Writ Petitions. The petitioner is directed to participate in the proceedings before the respondent. Since the dispute pertains to the Assessment Years 2003-04 to 2005-06, the petitioner is directed to file objections/ representations, if any, within a period of thirty days from the date of receipt of a copy of this order. The respondent is directed to pass appropriate orders after considering the such objections / representations, within a period of three months from the date of receipt of a copy of this order.

22. All the Writ Petitions are dismissed. No cost. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

jen

To
Deputy Commissioner of Income Tax,
Corporate Circle - 5 (2),121,
Nungambakkam High Road, Chennai 600 034.

+1 CC to Mr.N.V.Balaji, Advocate, sr 21811
+1 CC to M/s.Hema Muralikrishnan, Advocate, sr 20696

Pre-Delivery Common Order in
W.P.Nos.16217 to 16219 of 2016
and W.M.P.Nos.14001 to 14003 of 2016

RK (CO)
AT (22/05/2020)