IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.02.2020

Coram

The Honourable Mr.Justice C.SARAVANAN

W.P.Nos.1726 to 1728 of 2016
& 3132 to 3134 of 2016
and W.M.P.Nos.2567 to 2569 of 2016,
1506, 1508 & 1510 of 2016,
32155 & 32158 of 2019

M/s.Apex Laboratories Private Limited,
SIDCO Garment Complex, II Floor,
Chennai - 600 032.
Rep. by its Managing Director
Shri.S.S.Vanangamudi

...Petitioner in all W.Ps

Versus

The Deputy Commissioner of Income Tax
Large Tax Payer Unit - II,
Anna Nagar Western Extension,
Chennai - 600 101.

...Respondent in all W.Ps

Prayer in W.P.Nos.1726 to 1728 of 2016:

Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records of the respondent and quash the notice dated 26.03.2015 passed u/s.148 of the Act in PAN/GIR: AAACA5174G and the consequential order in AAACA5174G/DCIT, LTU-II/15-16 dated 12.11.2015, 27.11.2015 & 26.11.2015 respectively and direct the respondent to drop the reassessment proceedings for the assessment year 2008-09, 2009-10 & 2010-11 respectively.

Prayer in W.P.Nos.3132 to 3134 of 2016:

Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records of the respondent and quash the impugned reassessment order dated 29.12.2015 passed u/s.143(3) r.w.s.147 of the Act in PAN/GIR : AAACA5174G and direct the respondent to drop the reassessment proceedings for the assessment years 2008-09, 2009-10 & 2010-11 respectively.

For Petitioner in all W.Ps : Mr.Vikram Vijayaraghvan & Mr.R.Venkatnarayanan for M/s.Subbaraya Aiyar Padmanabhan & Ramamani

For Respondent in all W.Ps : Mrs.Hema Muralikrishnan, Senior Standing Counsel

C O M M O N   O R D E R

Heard the learned counsel for the petitioner and the learned senior standing counsel for the respondent. By this common order all the six writ petitions are being disposed.

2.1. W.P.Nos.1726 to 1728 of 2016 have been filed to quash the impugned notices and consequential communication of the respondent overruling the objection of the petitioner against reopening of the assessment for the Assessment Years 2008-09, 2009-10 & 2010-11 respectively.

2.2. W.P.Nos.3132 to 3134 of 2016 have been filed to quash the assessment orders passed by the respondent for the Assessment Years 2008-09, 2009-10 & 2010-11 respectively pursuant to the overruling of the objections of the petitioner of the assessment under Section 147 of the Income Tax Act, 1961.

3. The assessment orders dated 29.12.2015 for the Assessment Years 2008-09, 2009-10 & 2010-11 respectively, which have been impugned in W.P.Nos.3132 to 3134 of 2016, have passed by the respondent under Section 147 read with Section 143(3) of the Income Tax Act, 1961 pursuant to the communications impugned in W.P.Nos.1726 to 1728 of 2016. Therefore, they have become infructuous.

4. The impugned orders have confirmed the tax on the following heads:-

Writ Petition	Assessment Year	Reasons for reopening the Assessment
W.P.No. 3132/2016	2008-09	1.Additional depreciation on the lap equipment. 2.Expenditure on Doctor Hospitality.

W.P.No. 3133/2016	2009-10	1.Additional depreciation on the lap equipment. 2.Expenditure on Doctor Hospitality.
W.P.No. 3134/2016	2010-11	1.Additional depreciation on the lap equipment. 2.Non Deduction of tax for printing and stationary.

5. I have considered the arguments advanced by the both side counsels.

6. The petitioner has an alternate remedy against the impugned orders. However, it is noticed that of the three issues enumerated above have been considered by the courts. As far as reasons for confirming the demand on account of non-deduction of tax for printing and stationary charges for the Assessment Year 2010-11 is concerned, it is noticed that the issue is now covered by a decision of the Division Bench of this Court in the petitioner's own case in T.C.A.No.236 of 2011. The Division Bench by its order dated 28.11.2018 has dismissed the appeal filed by the revenue on the very same subject. Therefore, the impugned order confirmed by the respondent would require interference.

7. As far as the issue relating to expenditure on doctor hospitality for the Assessment Years 2008-09 & 2009-10 is concerned, the issue appears to have been answered in favour of the petitioner in petitioner's own case in T.C.A.No.723 of 2018 dated 18.03.2019. The Division Bench of this Court by the aforesaid order had held that such expenditure incurred only after 01.04.2009 can be allowed. Therefore, on this count, the assessment orders impugned in W.P.Nos.3132 & 3133 of 2016, cannot be sustained.

8. As far as the issue relating to additional depreciation on lab equipment is concerned, it appears that the issue has been answered in favour of the petitioner in Commissioner of Income Tax Vs. ELGI Finance Ltd., (2006) 286 ITR 674 (Mad).

9. Since the issue appears to be covered in favour of the petitioner, I set aside the assessment orders impugned in W.P.Nos.3132 to 3134 of 2016 and remit the cases back to the respondent to pass fresh orders in the light of the above decisions of the courts.

10. In the result,

i. W.P.Nos.3132 to 3234 of 2016 are disposed of with the above directions.

ii. W.P.Nos.1726 to 1728 of 2016 are dismissed as infructuous.

iii. No cost.

iv. Consequently, connected Miscellaneous Petitions are closed.

mrr / jen

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

To

The Deputy Commissioner of Income Tax
Large Tax Payer Unit - II,
Anna Nagar Western Extension,
Chennai - 600 101.
+2cc to Mrs.Hema Muralikrishnan, Advocate SR.No.14724, 14725
+2cc to M/s.Subbaraya Aiyar, Advocate SR.No.`4568, 14569

W.P.Nos.1726 to 1728 of 2016
& 3132 to 3134 of 2016

ev(CO)
mst(27/05/2020)