IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2020

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THE HON'BLE MR. JUSTICE C. SARAVANAN

W.P. No. 38803 of 2015
and
M.P. No. 1 of 2015

M/s. Pentamedia Graphics Limited,
Rep. by its Chief Financial Officer,
Mr.V.Venkataraman,
Son of N.Vedakrishnan,
"TAURUS", No.25, First Main Road,
United India Colony,
Kodambakkam,
Chennai 600 024. ...Petitioner

-vs-

The Assistant Commissioner of Income Tax,
Non Corporate Circle 20(1),
Nungambakkam High Road,
Chennai 600 034. ...Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records in PAN AAACP1647B dated 03.11.2015, on the file of the respondent herein relating to assessment year 2002-2003, quash the same.

For Petitioner : Mr. M. P. Senthilkumar
For Mr. N. Muthukumar

For Respondent : Mrs. Hema Muralikrishnan,
Standing Counsel

O R D E R

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondent.

2. The petitioner is aggrieved by the impugned notice dated 03.11.2015 issued under Section 154 of the Income Tax Act, 1961 by the respondent herein.

3. The dispute in the present case pertains to the Assessment Year 2002-03 and availability of benefit of Section 10B deduction. The petitioner had originally filed return on 31.10.2002 and claimed a deduction of Rs.97,41,44,000/- under Section 10B of the Income Tax Act, 1961.

4. An assessment order under Section 143(3) r/w. Section 92CA(3) of the Income Tax Act was passed on 28.02.2005 and the deduction claimed under Section 10B was restricted to Rs.14,91,10,145/-.

5. Aggrieved by the aforesaid assessment order dated 28.02.2005, the petitioner had filed an appeal before the Commissioner of Income Tax (Appeals). By an order dated 26.08.2005, the Commissioner of Income Tax (Appeals) partly allowed the appeal and remitted the case back for the computation of deduction under Section 10Bof the Income Tax Act, 1961.

6. Meanwhile, the respondent had passed an order dated 31.03.2006 giving effect to the order of the Commissioner of Income Tax (Appeals) dated 26.08.2005.

7. The Income Tax Officer passed a rectification order under Section 154 of the Income Tax Act, 1961, on 24,07.2007. In the aforesaid order, the amount of deduction under Section 10B was enhanced to Rs.44,14,91,000/-.

8. The petitioner took up this matter on further appeal before the Income Tax Appellate Tribunal in I.T.A.No.2515/Mds/2005 which was dismissed by its order dated 31.12.2007.

9. Under these circumstances, the petitioner filed the revised return on 31.03.2008. A further order dated 03.07.2008 giving effect to the order dated 24.07.2007 was passed by the respondent Assistant Commissioner of Income Tax.

10.Thereafter, a notice under Section 148 of the Income Tax Act, 1961 was issued to the petitioner on 28.09.2007 to reopen the assessment. Thereafter, a revised assessment order was passed under Section 147 of the Income Tax Act, 1961 on 31.12.2008.

11.The order dated 03.07.2008 of the respondent Assistant Commissioner of Income Tax was subject matter of proceedings under Section 263 of the Income Tax Act, 1961 by the Commissioner of Income Tax. An order came to be passed on 24.03.2011 and the Assessing Officer was directed to add back the book depreciation of Rs.54,18,33,000/- and verify and allow the claim for depreciation in accordance with the directions of the Commissioner of Income Tax (Appeals) after giving adequate opportunity to the petitioner.

12. Pursuant to the above, the Deputy of Commissioner of Income Tax passed order under Section 143(3) of the Income Tax Act, 1961. The said order was passed in the background of the order dated 24.03.2011 of the Commissioner of Income Tax, under Section 263 of the Income Tax Act, 1961.

13. It is in the background, the impugned notice dated 03.11.2015 has been issued under Sectin 154 of the Income Tax, Act, 1961, to rectify the mistakes committed in the assessment order dated 15.12.2011 on the ground that for computing total income, income tax depreciation of Rs.65,19,90,745/- was allowed, whereas for computing the deduction under Section 10B the book depreciation of Rs.54,18,33,000/- (though in the order dated 24.03.2011 amount shown is Rs.54,18,33,000/-) only was taken into account.

14. It has been stated that as a result, the correct amount of exemption to be allowed works out to only Rs.38,76,72,000/-.

15. Thus, it is evident that these are matters of facts and figures which are incapable of being decided under Article 226 of the Constitution of India. The petitioner cannot challenge the impugned notice issued under Section 154 of the Income Tax Act, 1961. I am therefore of the view that the petitioner should participate in the said proceedings before the respondent. If the petitioner has valid case, the respondent would be obliged to pass appropriate orders. Pettioner may therefore file its objection to the aforesaid notice within a period of thirty days from the date of receipt of a copy of this order.

16. Since the dispute pertains to the assessment year 2002-03, the respondent is requested to pass appropriate orders on merits after considering objection of the petitioner, if any, within a period of three months from the date of receipt of a copy of this order.

17. Writ petition stands disposed with the above observation. No Cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar
//True Copy//
Sub Assistant Registrar

ssi/ jen

To

The Assistant Commissioner of Income Tax,
Non Corporate Circle 20(1),
Nungambakkam High Road,
Chennai 600 034.

+1cc to M/s.Hema Muralli Krishnan, Advocate, S.R.No.8357

W.P. No. 38803 of 2015

VSN II (CO)
KKV/24/07/2020