IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2020

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. No. 39779 of 2015
and
M.P. No. 1 of 2015

M/s. Winner Milk Private Limited,
Represented by its Director,
K. Venkatrman,
No.123/3, N.H.66, Ginjee,
Thiruvannamalai Road,
Sathyamangalam Village,
Ginjee T.K. Villupuram District. ... Petitioner

Vs

The Deputy Commissioner of Income Tax,
Villupuram Circle, Villupuram. ... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the Respondent pertaining to the Reassessment Notice dated 31.03.2015 under Section 148 of the Income Tax Act, 1961 in PAN : AAAF24045R, for the Assessment Year 2008-2009 and quash the same.

For Petitioner : Mr. S. Elambharathi
For Respondent : Mr. A.N.R Jayaprathap
Standing Counsel

ORDER

Heard the learned counsel for the Petitioner and the learned Standing Counsel for the Respondent.

2. The Petitioner has challenged the impugned notice dated 31.03.2015 issued under Section 148 of the Income Tax Act, 1961 to reopen the Assessment for the Assessment Year 2008-2009. After the notice was issued, the Petitioner requested the Respondent to furnish the reason for reopening assessment which was communicated by the Respondent vide letter dated 25.06.2015. Thereafter, the Petitioner has filed his objections for

reopening of the Assessment vide his objections dated 22.07.2015. The Respondent has thereafter passed an Order/Communication dated 27.11.2015 overruling the objections of the Petitioner.

3. The reasons communicated to the Petitioner vide Communication dated 27.11.2015 though in compliance of the decision of the Honourable Supreme Court in G.K.N.Driveshafts (India) Ltd. Vs. Income Tax Officer and Others, (2003) 1 SCC 72, does not culminate in a reassessment proceedings. It merely shows the reasons for reopening of the Assessment under Section 148 of the Income Tax Act, 1961.

4. Under these circumstances, I am of the view, the Respondent should take up the case and pass appropriate orders under Section 147 of the Income Tax Act after considering the submissions of the Petitioner. While passing such Order, the Respondent is not only required to keep the facts of the case in mind but also well-settled principles of law. If there is a change of opinion, the Assessment cannot reopened. Similarly, if there was true and full disclosure of all material facts necessary for the Assessment made by the Petitioner, at the time of original assessment, the Respondent would be required to drop the proceedings as no action can be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts and necessary for his assessment, for that assessment year."

5. Since the dispute pertains to the Assessment Year 2008-2009, I direct the Respondent to take up this proceeding and dispose the case within a period of 45 days from the date of receipt of a copy of this Order in accordance with law. The Petitioner is given liberty to raise all defences and produce all materials that are relevant.

6. The Writ Petition stands disposed of with the above observations. No costs. Consequently, connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

To

The Deputy Commissioner of Income Tax,
Villupuram Circle, Villupuram.

+1 CC to Mr.S. Elambharathi, Advocate sr 12731.
+1 Cc to Mr.A.P. Srinivas, Advocate sr 13832.

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VSNII(CO)
SP(19/02/2020)