IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2020

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.Nos.16853, 17207, 16877, 16609 & 16651 of 2020
and WMP.Nos.20649, 20601, 20648, 21260, 21257,
20939, 20941, 20603, 20903 & 20904 of 2020

Krishnaraj Chandrasekar .. Petitioner in all WPs

Vs

1.The Assistant Commissioner of Income Tax
Non Corporate Circle 2 Income Tax Department
67-A Race Course Road, Coimbatore 641 018.

2.The Principal Commissioner of Income Tax,
Coimbatore 1 Income Tax Department
67-A Race Course Road, Coimbatore 641 018.

...Respondents in all WPs

Prayer in WP.No.16853 of 2020: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Certiorarified Mandamus, to call for the records of the 1st Respondent to quash the impugned notice No. ITBA / AST / S 148 / 2019-20 / 1017023125(1) dated 26.07.2019 in PAN ACTPC 1165H relating to the Assessment year 2017-18 and direct the 1st Respondent consequently to drop the proceedings of re-assessment initiated within the scope of section 147 of Income Tax Act 1961.

Prayer in WP.No.17207 of 2020: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Certiorarified Mandamus, to call for the records of the 1st Respondent to quash the impugned notice No. ITBA / AST / S / 148 / 2019-20 / 1017024989(1) dated 26.07.2019 in PAN ACTPC 1165H relating to the Assessment year 2013-2014 and direct the 1st Respondent consequently to drop the proceedings to re-assessment initiated within the scope of section 147 of the Income Tax Act 1961.

Prayer in WP.No.16877 of 2020: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Certiorarified Mandamus, to call for the records of the 1st Respondent to quash the impugned notice no ITBA/ AST/ S/ 148/ 2019-20/1017025015(1) dated 26.7.2019 in PAN ACTPC 1165 H Relating to the Assessment Year 2014-2015 and direct the 1st Respondent consequently to drop the proceedings of re-

Assessment initiated within the scope of section 147 of the Income tax act 1961.

Prayer in WP.No.16609 of 2020: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Certiorarified Mandamus, to call for the records of the 1st respondent to quash the impugned notice No. ITBA/ AST/ S/ 148/ 2019- 20/ 1017023097(1)/ dated 26.07.2019 in PAN. ACTPC 1165H relating to the Assessment Year 2015- 2016 and direct the 1st Respondent consequently to drop the proceedings of re assessment initiated within the scope of section 147 of the Income Tax Act 1961.

Prayer in WP.No.16651 of 2020: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Certiorarified Mandamus, to call for the records of the 1st respondent to quash the impugned notice No. ITBA / AST / S / 148 / 2019-20 / 1017023054 (1) dated 26.07.2019 in PAN ACTPC1165H relating to the Assessment year 2016-2017 and direct the 1st Respondent consequently to drop the proceedings of re-assessment initiated within the scope of section 147 of the Income tax Act 1961.

(In all WPs)
For Petitioner : Mr.A.S.Sriraman
For Respondents : Mr.A.P.Srinivas
Senior Standing Counsel

COMMON ORDER

Heard Mr.A.S.Sriraman, learned counsel for the petitioner and Mr.A.P.Srinivas, learned Senior Standing Counsel for the respondents. Though this matter is listed only for admission, Mr.Srinivas has obtained instructions and is armed with all necessary materials to proceed with the final hearing of the matter. Thus by consent, these matters are disposed finally even at the stage of admission.

2. These five writ petitions challenge proceedings for re-assessment initiated in terms of Sections 147 and 148 of the Income Tax Act, 1961 (Act). In four writ petitions relating to assessment years (AY) 2013-14 to 2016-17, the Assessing Officer/R1 has issued Section 143(2) notices indicating his inclination to proceed with re-assessment on merits. For AY 2017-18, no notice under Section 143(2) has been issued and the objection dated 24.01.2020 filed by the petitioner to the assumption of jurisdiction is pending disposal.

3. An order of scrutiny in terms of Section 143(3) has been passed for AY 2014-15 alone, whereas for the remaining years intimations under Section 143(1) have been issued. Thereafter

notices under Section 148 have been issued, in response to which the petitioner has filed returns of income as originally filed.

4. The procedure for re-assessment has been set out by the Supreme Court in GKN Driveshafts (India) Limited Vs. Income Tax Officer (259 ITR 19) in the following terms:

> 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 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 after filing of a return in response to notice under Section 148 and being supplied, on its request with the reasons on the basis of which re-assessment has been initiated, the assessee is at liberty to challenge assumption of jurisdiction. It is then incumbent upon the Assessing Authority to dispose such objections first, and only then proceed with the assessment on merits, if at all.

6. In the instant cases, for the first four years, notices under Section 143(2) have been issued even prior to the disposal of the objections filed by the petitioner challenging the assumption of jurisdiction. This is contrary to the procedure laid down by the Supreme Court and the notices under Section 143 (2) are thus not tenable. As far as the 5th year is concerned, though no notice under Section 143(2) has been issued, the objections have not been disposed till date.

7. In the light of the aforesaid, it would suffice that, while keeping the impugned notices issued under Section 143(2) in abeyance, R1 is directed to dispose the objections filed by the petitioner to the assumption of jurisdiction within a period of two (2) weeks after hearing the petitioner either by way of physical hearing or virtually. For this purpose, the petitioner will appear before the Assessing Authority on Monday, the 7th of December, 2020 at 10.30 a.m. without awaiting any further notice in this regard. The mode of hearing alone shall be intimated to the petitioner in advance.

8. If the Assessing Authority decides the question of jurisdiction adverse to the petitioner, proceedings for re-assessment will continue in accordance with law. Mr.Srinivas defends the issuance of the impugned notices on the ground that such notices would have to be issued prior to completion of assessment on merits. However, the requirement of the notice is itself subject to the Officer determining the question of assumption of jurisdiction.

9. Thus, while there is no dispute that the Officer is entitled to issue notice under Section 143(2) to take forward the assessment on merits, the issuance of the notice at a stage anterior to disposal of the objections to the assumption of jurisdiction, as has been done in these matters, is premature and contrary to law.

10. These writ petitions are disposed in the aforesaid terms. No costs. Connected Miscellaneous Petitions are closed.

s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

Ska/sl
To

1.The Assistant Commissioner of Income Tax
Non Corporate Circle 2 Income Tax Department
67-A Race Course Road, Coimbatore 641 018.

2.The Principal Commissioner of Income Tax,
Coimbatore 1 Income Tax Department
67-A Race Course Road, Coimbatore 641 018.

+1 CC to Mr.A.P.Srinivas, advocate sr 38513.

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GMR(CO)
SP(07/01/2021)