

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2020

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.No.24842 of 2019 and
WMP.No.24467 of 2020

M/s.Asianet Star Communications Private Limited
Kochar Jade Plot No. 22 Thiru Vi Ka Industrial Estate,
Guindy, Chennai - 600032. .. Petitioner

Vs.

Assistant Commissioner of Income Tax
Non-Corporate Circle - 20 (1)
Room No. 311 3th Floor Wanaparthi Block
Aayakar Bhavan, 121, Mahatma Gandhi Road,
Chennai - 600034. ...Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Certiorari, to call for the records pertaining to Notice bearing No. ITBA/ AST/ S/ 148/ 2018-19/ 1015132633(1) dated 21.02.2019 consequent Reasons bearing No.F.No. 21/ AAACA2460P/ AY 2012-13/ ACIT-NCC-20(1)/ Chennai dated 22.03.2019 consequent Notice bearing No. ITBA/ AST/ S/ 143(2)-3/ 2019-20/ 1016322795(1) dated 13.06.2019 and the consequent Impugned Order No. 21/ AAACA2460P/ AY2012-13/ ACIT/ NCC-20(1)/ Chennai dated 24.06.2019 on the file of the Respondent herein and quash the same.

For Petitioner : Mr.Porus F.Kaka Senior Counsel for
Mr.Sivaraman
For Respondent : Mrs.Hema Muralikrishnan
Senior Standing Counsel

सत्यमेव जयते
O R D E R

The petitioner has challenged notice under Section 148 of the Income Tax Act, 1961 (in short 'Act') dated 21.02.2019, reasons for re-assessment dated 22.03.2018, consequent notice dated 13.06.2019 and order dated 24.06.2019 rejecting the assumption of jurisdiction under Section 147 of the Act.

2. In regard to Assessment Year (AY) 2012-13, a return of income had been filed on 29.11.2012 along with tax audit report and financials, followed by a revised return. An intimation dated 30.01.2014 in terms of Section 143(1) was issued. Inter alia, the foreign tax credit claimed by the petitioner was denied. Thereafter, notice under Section 143(2) was issued and

there was exchange of communications between the petitioner and the department in regard to the issues that arose from the returns of income. Specifically, a hard copy of the return of income, financial statements and tax audit report were sought, that were supplied by the petitioner. The petitioner sought rectification of the intimation on various grounds including the rejection of the foreign tax credit claimed. This rectification petition is admittedly pending as on date. The proceedings for assessment did not culminate in an order of assessment under Section 143(3).

3. On 19.12.2018, the petitioner intimated the respondent/assessing authority that Asianet Communication Private Limited (ACPL) had amalgamated with Vijay Television Private Limited (VTPL), and by order dated 30.07.2020 passed by the National Company Law Tribunal, the appointed date will be 01.10.2017. The name of the assessee consequently stood amended to Asianet Star Communication Private Limited (ASCPL) and its business address was changed to Plot No.SP 22, TS No.25, Block No.5, 7,8,9, 10th Floor, Kochar Jade, Thiru Vi Ka Industrial Estate, Guindy, Chennai, Tamil Nadu - 600 032 and the aforesaid detail was also intimated to the respondent on 10.01.2019.

4. Notwithstanding the intimation regarding change of name and address, the impugned notice under Section 148 came to be issued in the name of ACPL to No.15, Jaganathan Road, Nungambakkam, Chennai - 600 034 on 21.02.2019, on which date, no such entity by that name existed.

5. In line with the procedure set out by the Supreme Court in the case of *GKN Driveshafts (India) Ltd. V. Income Tax Officer* (259 ITR 19), the petitioner enclosed the revised return filed earlier by it and also sought reasons on the basis of which jurisdiction had been assumed for re-assessment. The respondent was intimated yet again, about the merger of the erstwhile entity with VTPL and the change of name to ASCPL.

6. Reasons for reopening dated 22.03.2019 were supplied reading as follows:

GOVERNMENT OF INDIA
INCOME TAX DEPARTMENT
Office of the Assistant Commissioner of Income Tax,
Non-Corporate Circle-20(1), Room No.311, 3rd Floor,

No.21/AAACA2460P/A.Y.2012-13/ACIT-NCC-20(1) Chennai Date:
22/03/2019

M/s.Asianet Star Communications P. Ltd.
(Formerly known as M/s.Asianet Communications P. Limited)
Kochar Jade, Plot No.22
Thiru.Vi.ka Indl. Estate
Guindy, Chennai-600 032.

Sirs,

Sub: Income Tax Assessment - A.Y. 2012-13 - Your own case -
PAN: AAACA2460P - Communication of reasons for
Re-opening of assessment - Reg.

Ref: 1. This office notice u/s.148 of the IT Act, 1961,
dated 21/02/2019.

2. Your letter dated 21/03/2019 filing Return of
Income for the Asst.

Year 2012-13 on 20/03/2019, in response to this
Office Notice u/s

148 of the Act, Dated 21/02/2019 and also
requesting for reasons for reopening the Assessment.

Please refer to the above.

The reasons from the depreciation statement that under the
Item 'Computers', an amount of Rs.74,07,685/- is claimed as
depreciation @ 60% as detailed below:

Sl. No. 1.	Name of the Machinery and % of depreciation category 2.	Value of the machinery 3.	Depreciation claimed 4.	Eligible Depreciation 5.
a.	Computers (Additions before September, 2011 i.e. for > 180 Days)	1,01,52,844	60,91,706 (Depreciation claimed @ 60%)	30,45,853 (Depreciation eligible @ 15%)
c.	Computers (Additions after September, 2010 i.e. for < 180 Days)	43,86,597	13,15,979 (Depreciation claimed @ 30%)	3,28,995 (Depreciation eligible @ 7.5%)
Total			74,07,685	33,74,848

The nature of Item is 'Plant and Machinery' eligible for
depreciation @ 15% which works out to Rs.33,74,848/- as noted in
Column No.5 of the above Table. Thus, there is excess
depreciation claimed of Rs.40,32,837/-.

2. It is also seen that there is claim of excess relief u/s
90/91 and also tax credit in ITR is less than tax credit in 26AS.

3. Therefore, for the reasons discussed in Paras (1) & (2)
above, I have reason to believe that there is escapement of
income within the meaning of u/s 147 of the Income-tax Act, 1961,
in the instant case for the A.Y.2012-13 due to the failure on the
part of the assessee to disclose fully and truly all material
facts necessary for its assessment.

Asst. Commissioner of Income-tax
Non Corporate Circle-20(1), Chennai.

7. The two issues on which jurisdiction has been assumed are i) claim of depreciation on computers, ii) alleged excess relief of tax credit under Section 90/91 of the Act since the tax credit in the income tax return was less than the tax credit reflected in Form 26AS. The petitioner filed objections dated 06.05.2019 on the assumption of jurisdiction pointing out that there was no new or tangible material on the basis of which the proceedings for re-assessment has been initiated. The petitioner relied on the judgments of the Supreme Court in the case of *CIT V. Foramer France* (264 ITR 566), *Commissioner of Income Tax V. Corporation Bank Ltd.* (254 ITR 791) *Radhasoami Satsang V. Commissioner of Income Tax* (193 ITR 321) *CIT V. Excel Industries Limited* (358 ITR 295) and *CIT V. Gopala Naicker Bangaru* (236 CTR 82) contending that the issues on the basis of which the proceedings had been initiated had been reflected in the return of income and annexures called for in the course of assessment, and hence there was no basis for the re-assessment. The objections however came to be rejected on 24.06.2019 relying on the decisions of the Supreme Court in *Raymond Woollen Mills Ltd. V. Income Tax Officer* (236 ITR 34) and a Division Bench of the Delhi High Court in the case of *AGR Investments Limited V. Additional Commissioner of Income Tax* (333 ITR 146), challenging which the present writ petition has come to be filed.

8. Heard Mr.Porus F.Kaka, learned Senior Counsel for Mr.Srinath Sridevan, learned counsel for the petitioner and Mrs.Hema Muralikrishnan, learned Senior Standing Counsel for the respondent.

9. This is a case where the proceedings for re-assessment have been initiated beyond a period of four years from the end of the relevant assessment year, i.e., A.Y. 2012-13, at the fag end of six year period. The proviso to Section 147 states that where an assessment had been completed under scrutiny at the first instance, the time available to the department to initiate proceedings for re-assessment would be extended from four to six years, conditional upon the officer establishing that the escapement of income was attributable to the failure of the assessee to have failed to file a return of income or to have made a full and true disclosure of income in the return of income.

10. In the instant case, the proceedings at the first instance have not resulted in an order of assessment under Section 143(3). However, in my view, this would not lead to the assumption that there was no application of mind to the issues arising from the return of income as the Assessing Officer has issued a notice in terms of Section 143(2) on 02.09.2014, called for the income tax return and annexures and conducted a personal

hearing on 11.09.2014. The petitioner has filed a written submission on 15.09.2014, received and acknowledgement by the respondent on the same day enclosing a copy of the return of income, financial statements with all schedules and annexures and Auditors' Report under Section 44AB of the Act with all annexures. All material particulars in regard to the probable issues emanating from the return of income are on record before the Assessing Authority.

11. Initiation of scrutiny is by issuance of a notice under Section 143(2) and this has been done in this case. Not only has the Assessing Officer issued a notice, he has conducted a hearing and sought various particulars and this, in my view, is tantamounts to the process of scrutiny. The passing of an order or otherwise is entirely within the control of the Officer and in such circumstances the fact that no order of assessment has been passed cannot be held against the assessee/petitioner. I am conscious of, and hasten to add that this is not of universal proposition and has to be examined against the facts and circumstances in every case to decide whether the officer has displayed application of mind to the matter. In this case, a comparison of the details sought for by the Officer and supplied by the petitioner at the stage of original assessment and of the reasons for re-assessment that is, depreciation and foreign tax credit reveal total identity of the issues, identified at the time of original assessment and the reasons on the basis of which proceedings for re-assessment have been initiated. Moreover, and admittedly, there is no new material, let alone tangible material, that has come to the notice of the authority to justify the impugned proceeding for re-assessment.

12. As far as the claim of depreciation is concerned, the Officer proceeds on the ground that computers constitute plant and machinery, eligible for depreciation at 15% and not 60% as claimed by the petitioner. Learned Senior Standing Counsel would submit that as the petitioner is in the business of media and communication and operates a television channel, computers and all accessories thereof would assume a far more integral role in the business, as such equipment would support editing, graphics, sound effects and other facilities intrinsic to the business.

13. Though an attractive argument, such distinction has not been envisaged in Appendix I (depreciation schedule), and Part A/Tangible Assets, categorises all computers under the head 'Machinery and Plant', eligible for depreciation at 60%. Moreover, the depreciation statement referred to in the reasons recorded, was admittedly on record from the commencement of original proceedings.

14. The above conclusion would be equally, if not more relevant, to the second issue concerning the alleged claim of

excess tax credit. The reasons state that excess relief under Section 90/91 has been claimed and the tax credit in the income tax return is less than the tax credit in the 26AS. In such an event I see no escapement of income to tax, as the petitioner, going as per Form 26AS, has more tax to its credit as against what was claimed in the return of income.

15. Moreover, the tax credit claimed has been rejected in full in intimation dated 30.01.2014 and the petitioner has sought rectification of the intimation on 09.05.2017 and restoration of the credit claimed. There is thus no prejudice that has been caused to the revenue in regard to the claim of foreign tax credit and the initiation of re-assessment proceedings on this ground is found to be misconceived, in light of the judgment of the Supreme Court in *Commissioner of Income Tax V. Sun Engineering Works (P) Ltd.* (198 ITR297).

16. As regards the decisions relied on by the revenue, they turn on the sufficiency of reasons recorded. The Court had rejected the challenge for re-assessment on the ground that they will not, under Article 226 of the Constitution of India, test the sufficiency of reasons recorded. These decisions are distinguishable, since I have in the present matter, looked to the reasons only for the limited aspect of comparing the issues raised therein with the issues raised at the time of initial proceedings for assessment and the material on the basis of which the impugned proceedings were initiated.

17. There is yet another point. The petitioner has, on 19.12.2018, brought to the notice of the Assessing Officer the factum of amalgamation. Though initially a tentative argument was put forth to the effect that this letter was not received by the officer, I find a seal at the bottom of the letter along with tracking number of the communication making it clear that the communication has been delivered to the addressee, i.e., ACIT, Non-corporate Circle 20(1), the respondent herein. On 10.01.2019, the change of name of the petitioner from VTPL to ASCPL has also been communicated to the respondent and this communication has been received on 14.01.2019. Thus, both the factum of amalgamation and change of name have been duly intimated to the Officer. Despite this, notice under Section 148 has been issued to ACPL, which, in my view invalidates the proceedings in full. The fact that the petitioner has responded to the notice would not bring to life an invalid proceeding. The response of the petitioner has been on the letter head of ASCPL, the reasons have been communicated to ASCPL and the objections of the petitioner to the assumption of jurisdiction have been filed on the letter head of ASCPL. Despite the reiteration of the fact of amalgamation and change of name by the petitioner on 21.03.2019 in response to notice under Section 148 of the Act,

Section 143(2) notice has been issued to ACPL, a non-existing entity.

18. In the light of the above, impugned notice dated 21.02.2019, reasons for re-assessment dated 22.03.2018, consequent notice dated 13.06.2019 and order dated 24.06.2019 rejecting the assumption of jurisdiction under Section 147 of the Act are quashed.

19. This Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

The Assistant Commissioner of Income Tax
Non-Corporate Circle - 20 (1)
Room No. 311 3th Floor Wanaparthi Block
Aayakar Bhavan, 121, Mahatma Gandhi Road,
Chennai - 600034.

+lcc to M/s.Hema Muralikrishnan, Advocate SR.No.39442
+lcc to M/s.Srinath Sridevan, Advocate SR.No.39138

AKM/10.3.21 /7P-4C/

W.P.No.24842 of 2019 and
WMP.No.24467 of 2020
04.12.2020

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