IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2020

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.34554 of 2019
and
WMP. Nos.35260 & 13728 of 2020

M/s. RK Textiles (India)
Represented by its Partner
Ajay Agarwal
A7&8, TVK Industrial Estate,
Guindy, Chennai-600 032 .. Petitioner

Vs

1. Assistant Commissioner of Income Tax
Non Corporate Circle - 19(1),
6th Floor, Annex Building,
121, Mahatma Gandhi Road,
Nungambakkam, Chennai- 600 034.

2. Principal Commissioner of Income Tax 10,
121, Mahatma Gandhi Road,
Nungambakkam, Chennai- 600 034. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying Writ of Certiorari, to call for the records on the file of the First Respondent and quash the impugned order passed by the First Respondent in Document No.20121048522 in PAN AADFR5429F dated 22.11.2019 passed under Section 143(3) read with Section 147 of the Income Tax Act, 1961 for the Assessment Year 2012-13.

For Petitioner : Mr.N.V.Lakshmi
for Mr.N.V.Balaji

For Respondents : Mrs.Prabhu Mukund Arun Kumar
Junior Standing Counsel

O R D E R

The petitioner challenges an order of assessment for assessment year 2012-13 passed in terms of the provisions of

Section 143(3) read with Section 147 of the Income Tax Act, 1961 (in short 'Act').

2. A return was filed by the petitioner returning 'nil' income and an intimation under Section 143(1) is stated to have been issued. The assessment was not taken up for scrutiny thereafter. Notice under Section 148 was issued on 04.01.2019, beyond a period of four years from the end of the relevant assessment year. The petitioner reiterated the return of income filed originally, notice under Section 143(2) was issued on 14.02.2019 and reasons for reopening of the assessment supplied to the petitioner on 22.02.2019.

3. The petitioner, vide letter dated 08.04.2019 objected to the assumption of jurisdiction for re-assessment pointing out that the issue on merits as reflected in the reasons for re-assesssment was covered by an order of the jurisdictional High Court in the case of National Company V. Assistant Commissioner of Income Tax (415 ITR 5) and the re-assessment itself initiated beyond the permissible period of four years.

4. The objections were rejected by order dated 15.04.2019 and the process of assessment taken up thereafter culminating in the impugned order of assessment dated 22.11.2019.

5. Learned counsel for the petitioner relies on a slew of judgments, such as CIT V. Kelvinator India Ltd., both the Full Bench of the Delhi High Court (256 ITR 1) and the Supreme Court (320 ITR 561), CIT V. Indo Arab Air Services (283 CTR 92) and TANMAC India V. DCIT (78 taxmann.com 155) to support her arguments on the aspect of assumption of jurisdiction.

6. The Revenue in counter, would state that the petitioner has an effective statutory appellate remedy and thus the Writ Petition is itself not maintainable. Without prejudice to the aforesaid submission, the assumption of jurisdiction is defended on the ground that the proper procedure as laid down by the Supreme Court in the case of GKN Drive Shafts (India) Ltd. V. Income Tax Officer (259 ITR 19) has been strictly complied with. Moreover, it is pointed out that originally, only an intimation was issued and the assessment not taken up for scrutiny. Reliance is placed on the judgment of the Supreme Court in Assistant Commissioner of Income Tax V. Rajesh Jhaveri Stock Brokers Pvt. Ltd. (291 ITR 500).

7. Having heard learned counsel, I am of the view that the assumption of jurisdiction by the respondent under Section 147 cannot be faulted. Admittedly, the return of income filed by the petitioner had not been taken up for scrutiny and as such, there has been no application of mind by the Officer at the original instance. The decisions relied upon by the learned counsel for the petitioner are distinguishable, since they turn on entirely different facts. In the case of Kelvinator India Ltd., (supra) both the Delhi High Court as well as the Supreme Court found that there was no tangible material on the basis of which proceedings for re-assessment may be initiated. So too in Indo Arab Air Services (supra).

8. In the present case, the reasons for re-assessment refer to material, such as the deed of retirement dated 14.06.2011 under which the transfer of immovable properties was carried out. There is a clear finding by the Assessing Officer to the effect that the return of income filed by the petitioner did not disclose the capital gains that would arise out of the transfer under the deed of retirement and it is for this purpose that the re-assessment has been initiated.

9. Learned counsel then makes a submission that turns on the merits of the matter arguing that the respondent ought to have accepted the binding decision of this Court in the case of National Company (supra). She relies on the judgment of the Supreme Court in UOI V. Kamalakshi Finance Corporation (55 ELT 433), Division Bench of the Rajasthan High Court in Commissioner of Income Tax V. Sunil Kumar (212 ITR 238) and Bombay High Court in Subramaniam V. Siemens India Ltd. (156 ITR 11) to reiterate the binding nature of orders passed by Courts upon subordinate authorities.

10. To decide this issue, one would have to advert to the facts briefly. The petitioner was a partnership firm comprising eight partners. In 2011, six partners retired and two continued in partnership. The deed of retirement provides for transfer of certain immovable properties and fixed assets to the retiring partners. A portion of the amount payable to the retiring partners was retained in the books of the firm as a loan. The Assessing Authority had received information in relation to the transfer of the capital assets to the retiring partners and was of the view that such transfer gave rise to capital gains under Section 45(4), liable to be taxed. It was for this reason that proceedings for re-assessment had been initiated.

11. According to the petitioner, this issue is squarely covered by the decision of this Court in National Company (supra) and this was also brought to the notice of the Assessing Authority. It was thus incumbent upon him to have followed the same, instead of which the Officer states that the decision has not been accepted by the Department, parallelly admitting that no petition for Special Leave had been filed as against the same on account of low tax effect. On the other hand, he relies on another decision of the jurisdictional Court in CIT V. Associated Electrical Agencies (2011-TIOL-843-HC-MAD-IT) in support of his conclusion that the transaction falls within the realm of taxability. The question is whether this would result in judicial indiscipline attracting application of the judgment of the Supreme Court in the case of Kamalakshi Finance Corporation (supra).

12. The taxability of a transaction would turn upon the facts of a particular transaction/event and it is for the officers of the Department to look into the documentation entered qua the parties as well as other relevant material to come to a conclusion whether the transaction gives rise to capital gains or not. In the present case, the Assessing Officer has examined the issue, coming to a conclusion based on the decision in Associated Electrical Agencies (supra) that

the transaction is taxable. The Officer has not ignored the decision in National Company (supra), preferring instead to rely upon an alternate decision where, according to him, the factual matrix is more apposite to the facts in the present case. If at all the petitioner is aggrieved, the proper recourse would be to file an appeal before the first Appellate Authority. I am of the view that the impugned order does not give rise to any legal flaw amenable to interference under Article 226 of the Constitution of India and the Assessing Authority cannot be said to be guilty of judicial indiscipline in this case.

13. This Writ Petition is dismissed granting liberty to the petitioner to file a statutory appeal against the impugned order, if it so desires, within a period of four (4) weeks from date of receipt of a copy of this order. Such appeal, if filed within the time frame as aforesaid, shall be taken on file by the Registry of the Commissioner of Income Tax (Appeals) without reference to limitation and disposed as expeditiously as possible. No costs. Connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Assistant Commissioner of Income Tax
Non Corporate Circle - 19(1),
6th Floor, Annex Building,
121, Mahatma Gandhi Road,
Nungambakkam, Chennai- 600 034.

2. The Principal Commissioner of Income Tax 10,
121, Mahatma Gandhi Road,
Nungambakkam, Chennai- 600 034.

Copy to
3. The Section Officer,
VR Section, Highcourt,
Madras

+1 CC.to M/s. NV.BALAJI, ADVOCATE, SR.NO.42238/2020
+1 CC.to M/s. HEMA MURALIKRISHNAN, ADVOCATE, SR.NO.42687/2020

AK(CO)

SM/05/03/2021