IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.327 of 2019
&
W.M.P.Nos.6925 & 325 of 2019

(Through Video Conferencing)

M/s. Fast Finance Private Limited
Represented by its Director
Mr.Jawahar Nichani
No.29, Pycrofts Garden Road
Flat No. 1, 1st Floor, Ambrosia Apartments
Wallace Garden
Chennai - 600 006. ... Petitioner

Vs

Assistant Commissioner of Income Tax
(OSD), Corporate Ward 2(2), Chennai
No.121, Mahatma Gandhi Road
Nungambakkam
Chennai - 600 034.
... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records on the file of the Respondent in PAN.AAACF1137E in passing the impugned re-assessment order under Section 143 (3) read with Section 147 of the Income Tax Act, 1961 dated 27.11.2018 in the case of the petitioner for the impugned assessment year 2011-12 and quash the same as illegal, arbitrary and without jurisdiction.

For Petitioner : Mr.R.Sivaraman

For Respondent : Ms. Hema Murali Krishnan
Sr. Standing Counsel

ORDER

The petitioner has challenged the impugned assessment order dated 27.11.2018 passed pursuance to a notice issued under Section 147 of the Income Tax Act, 1961 dated 23.03.2018 for the assessment year 2011-12.

2. It is the case of the petitioner that the impugned order has been passed contrary to the decision of the in Hon'ble Supreme Court in GKN Drive Shafts (INDIA) Ltd. Vs. Income Tax Officer & Others, 259 ITR 19 (SC).

3. Appearing on behalf of the petitioner, learned counsel for the petitioner submits that after the notice was issued initially under Section 148 of the Income Tax Act, 1961 the petitioner filed a reply on 27.04.2018 and requested the Officer-respondent to close the file. Thereafter, a detailed objection was filed by the petitioner. It is submitted that without giving a speaking order in terms of the decision of the above decision of the Hon'ble Supreme Court cited supra, the impugned order has been passed.

4. Defending the order, learned counsel for the respondent, submits that, the petitioner has an alternate remedy by way of an appeal before the Commissioner of Income Tax under Section 246 A of the Income Tax Act, 1961.

5. Learned counsel for the respondent, further submits that after the notice was issued, the petitioner also called for explanations and reasons for reopening of the assessment which was furnished by the department on 28.06.2018 and after the aforesaid reason was furnished to the petitioner, petitioners' reply to the notice under Section 148 by merely requested the respondent to close the reopening assessment on the ground that they were unaware as to Shirish C Shah or his group companies particularly M/s. Yantra Natural Resources Limited of the company mentioned in the reasons for reopening of the notice was there.

6. It is submitted that after the aforesaid reply, the respondent proceeded to issue notice under Section 143 (2) of the Income Tax Act, 1961 on 09.08.2018 and thereafter, another notice under Section 142 (1) of the Income Tax Act, 1961 and it is only thereafter, the petitioner has filed an objection. It is submitted that question of filing an objection after the assessment proceedings had recommenced after furnishing of the reasons for reopening the assessment cannot be countenanced in the light of the decision of the Hon'ble Supreme Court in GKN Drive Shafts (INDIA) Ltd. Vs. Income Tax Officer & Others, 259

ITR 19 (SC) referred to supra. She submits the writ petition is devoid of merits as the petitioner did not ask of a speaking order. Instead the petitioner participated in the re-assessment proceedings by submitting reply.

7. Heard learned counsel for the petitioner and the respondent perused the impugned order and the communication exchanged inter-say between the petitioner and the respondent. The Hon'ble Supreme Court in GKN Drive Shafts (INDIA) Ltd. Vs. Income Tax Officer & Others, 259 ITR 19 (SC) which reads as under:

> "Heard learned counsel for the parties. Leave is granted.
>
> By the order under challenge, a Division Bench of the High Court at Delhi dismissed the writ petition filed by the appellant challenging the validity of notices issued under Sections 148 and 143(2) of the Income Tax Act, 1961. The High Court took the view that the appellant could have taken all the objections in its reply to the notices and that, at that stage, the writ petition was premature. Accordingly, the writ petition was dismissed on 31st January, 2001. Aggrieved by that order, the appellant is in appeal before us.
>
> Mr. M.L. Verma, learned senior counsel appearing for the appellant, submits that the impunged notices relate to seven assessment years; that during the pendency of these appeals, in respect of two assessment years, viz., 1995-96 and 1996-97, assessment has been completed against which appeals have been filed. Notices relating to the other five assessment years, viz., 1992-93, 1993-94, 1994-95, 1997-98 and 1998-99, are now the subject-matter of these appeals.
>
> 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.
>
> Insofar as the appeals filed against the order of assessment before the Commissioner (Appeals), we direct the appellate authority to dispose of the same, expeditiously.
>
> With the above observations, the civil appeals are dismissed. No costs."

8. Though the petitioner did not ask for a speaking order initially, nevertheless the facts on record indicate that before the assessment order was passed, by a communication dated 19.09.2018, the petitioner has asked for a speaking order. In any event, once a notice under Section 148 of the Income Tax Act, 1961 is issued and reasons given thereafter, it was incumbent on the part of the respondent to have passed a speaking order, in terms of the decision of the Hon'ble Supreme Court before passing an assessment order. Considering the same impugned order is set aside and the case is remitted back to the respondent to pass a speaking order and thereafter, complete the assessment in accordance with law.

9. Since the dispute pertains to the assessment year 2011-12 and also a decade has passed since the relevant assessment year, the respondent shall endeavour to complete the assessment within a period of 90 days from the date of receipt of this order.

This writ petition stands disposed of with the above directions, consequently connected writ miscellaneous petitions are also closed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

nst

To

Assistant Commissioner of Income Tax
(OSD), Corporate Ward 2(2), Chennai
No.121, Mahatma Gandhi Road
Nungambakkam
Chennai - 600 034.

+1cc to M/s.Hema Muralikrishnan, Advocate, S.R.No.61362

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RSN(CO)
SU(15/12/2021)