IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

Writ Petition No.678 of 2020
and
WMP. Nos.807 of 2020 & 322 of 2021

M/s.RAS Adyar Hotels Pvt. Ltd.
rep. by its Chairman and Managing Director,
Justice V Ramaswamy Road,
Adyar, Chennai-600 020. …Petitioner

Vs

Deputy Commissioner of Income Tax,
Corporate Circle - 5(1) Chennai
Room No.414 Main building,
Ayakar Bhavan, MG Road,
Nungambakkam, Chennai-34. … Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari, to call for the records on the file of the Respondent passing the impugned order dated 31.12.2019 confirming the Section 148 notice dated 25.03.2019 and quashing the said impugned assessment order dated 31.12.2019 confirming the notice dated 25.03.2019.

For Petitioner : Mr.G.Asokapathy
for Pass Associates

For Respondent : Mrs.Hema Muralikrishnan
Senior Standing Counsel

O R D E R

The challenge is to an order of re-assessment dated 31.12.2019 passed in terms of Section 143(3) read with Section 147 of the Income Tax Act, 1961 (in short 'Act').

2. Heard Mr.Asokapathy, learned counsel for the petitioner and Mrs.Hema Muralikrishnan, learned Senior Standing Counsel for the respondents.

3. At first blush and on a perusal of the relevant dates and events, it appears to me that the impugned order has been passed in violation of the procedure set out for re-assessment by the Supreme Court in the case of GKN Driveshafts (India) Ltd. V. Income Tax Officer (259 ITR 19). The procedure as set out in the last paragraph of the aforesaid judgment is extracted below:

> '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.'

4.Upon receipt of a notice under Section 148, it is incumbent upon an assessee to file a return of income and seek reasons on the basis of which, the re-assessment has been initiated, if it so desires. In the present case, the assessment year relating to the re-assessment is 2012-13 and the notice for re-assessment has been issued on 29.03.2018 beyond the period of four years. In response to the same, the petitioner has written to the revenue on 08.04.2019 to the effect that the return of income already filed be adopted in response to the notice under Section 148 and requesting the reasons for re-assessment. This letter has been received by the revenue on 09.04.2019. Nothing has transpired till August, 2019.

5.Under cover of email dated 11.08.2019, the Assessing Authority issues a communication dated 16.08.2019 calling for various particulars on merits. It is relevant to note that the reasons as sought for have not been furnished at that juncture and this is in contravention of the procedure set out. Notwithstanding the same, the petitioner responds under cover of email dated 16.08.2019 to which letter, there is silence till 29.12.2019 when, under cover of email of even date, the reasons are supplied. On 30th December, a notice under Section 143(2) is issued to which the assessee responds on 31.12.2019 and the impugned order has come to be passed on the same day.

6.As per the procedure set out by the Supreme Court, the reasons are to be furnished promptly extending an opportunity to the petitioner to challenge the assumption of jurisdiction under Section 147. A speaking order is to be thereafter passed by the Authority on the aspect of assumption of jurisdiction and notice to proceed with the assessment on merits would become relevant only thereafter and subject to the decision taken by him on the question of assumption of jurisdiction. These stages are conspicuous by their absence in the present case and the Assessing Authority has passed the order on 31.12.2019 without affording any opportunity to the petitioner and in complete violation of the stipulated procedure. The impugned order of assessment is thus annulled and this writ petition allowed. No costs. Connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

ska/vs

To

The Deputy Commissioner of Income Tax,
Corporate Circle - 5(1) Chennai
Room No.414 Main building,
Ayakar Bhavan, MG Road,
Nungambakkam, Chennai-34.

+1cc to Mr.Hema Muralikrishnan, Advocate Sr.8615

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srg 10/03/2021