

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2021

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. Nos.954 of 2020 & 35909 of 2019
WMP. No.36831 & 36829 of 2019, 1162 & 1161 of 2020

M/s.Sanmina-SCI Technology India Private Limited
Represented by its authorised signatory
Mr.Nimai Charan Nayak ... Petitioner in both Wps

Vs.

- 1.The Assistant Commissioner of Income Tax
Corporate Circle 6(1)
7th Floor, Wanaparthi Block
Aayakar Bhavan Nungambakkam
Chennai-600034
- 2.Principal Commissioner of Income Tax, Chennai-6
Aayakar Bhavan, Nungambakkam
Chennai-600034 ...Respondents in both WPs

Prayer in W.P.No.954 of 2020: Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of certiorari calling for the records on the file of the 1st Respondent and quash the order passed by the 1st respondent dated 29.12.2019 under Section 143(3) r.w. Section 147 of the Income Tax Act in DIN-20131179274 along with corrigendum dated 10.01.2020 in DIN No.ITBA/COM/F/17/2019-20/1023761766(1).

Prayer in W.P.No.35909 of 2019: Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of certiorari calling for the records on the file of the 1st Respondent and quash the order in ITBA/AST/F/17/2019-20/1023281415(1) dated 27.12.2019 along with notice dated 29.03.2019 in Notice No. ITBA/AST/S/148/2018-19/1015527916 (1) in PAN: AAKCS8133K for the assessment year 2013-14.

In both WPs

For Petitioner : Mr.N.V.Balaji

For Respondents : Mr.A.P.Srinivas
Senior Standing Counsel

C O M M O N O R D E R

Heard Mr.N.V.Balaji, learned counsel for the petitioner and Mr.A.P.Srinivas, learned Senior Standing Counsel for the respondents.

2. The petitioner has filed the present writ petitions challenging proceedings under Section 147 of the Income Tax Act, 1961 (in short 'Act') for re-assessment in relation to assessment year 2013-14. W.P.No.35909 of 2019 is dismissed as infructuous seeing as it challenges an order dated 27.12.2019 that stands telescoped in order of assessment dated 29.12.2021. Though an interim stay was obtained initially, the Department proceeded to pass a final order of assessment, which has come to be challenged in W.P.No.954 of 2020 which is decided by way of the following order.

3. The petitioner had filed a return of income within time accompanied by Form 56F, a report under Section 10A and 10AA of the Act making a full disclosure in relation to the deduction claimed under the provisions of Section 10AA in connection with its eligible unit engaged in export of IT enabled services located in MEPZ Chennai.

4. The petitioner participated in proceedings for assessment that culminated in an order of assessment passed under Section 143(3) dated 30.03.2016 wherein the claim for exemption was examined in detail, the respondent Assessing Officer, upon perusal of Form 56F proceeding to effect various adjustment to the exemptions claimed.

5. While this is so, a notice under Section 148 has come to be issued on 29.03.2019 beyond the period of four years as stipulated in Section 147 of the Act in compliance with which the petitioner filed a return and also sought reasons on the basis of which the proceedings for re-assessment were initiated, vide communication dated 23.04.2019. The reasons have been supplied on 19.06.2020 reading as follows:

As per your request, it is hereby stated that the basis of forming reason to believe and details of escapement of income during the AY 2013-14 given below:

"the assessee claimed deduction u/s 10AA @ 100% for the 10th year, whereas in the first five years 100% deduction is allowed u/s 10AA, hence the balance

50% amounting to Rs.60027729/- is required to be added back to assessed income."

Therefore, you are requested to furnish requisite details on or before 21.06.2019.

6. The basis of the re-assessment is the alleged excess claim of deduction under Section 10AA of the Act. The instant proceedings initiated beyond a period of four years will thus have to conform to limitation prescribed under the proviso to Section 147 of the Act. The provisions of Section 147 prescribe a limitation of four years normally, extended to six years in cases where an order of scrutiny has been passed at the first instance. In addition, the petitioner should have defaulted in filing of the return, or the proceedings for re-assessment should be based on the failure of the petitioner to have made full and true disclosure of income.

7. These conditions are not satisfied in the present case, seeing as the return of the petitioner has, admittedly, been filed within time and the disclosure of the petitioner is also not in question. In fact, the original order passed under Section 143(3) proceeds to examine the claim of exemption under Section 10AA, minutely.

8. No error is pointed out in the returns or annexures filed by the petitioner or any of the details filed at the time of assessment and in such an instance, the proceedings for assessment, initiated beyond a period of four years, is barred by limitation. It appears that the Assessing Officer had lost sight of the issue now raised.

9. Explanation 2(c) to Section 147, relied on by the revenue, reads as follows:

Where an assessment has been made but income chargeable to tax has been under assessed or such income has been made the subject of excess relief under this Act or excessive allowance under the Act has been computed,

10. Explanation 2(c) to Section 147 will not come to the aide of the relevance as, while the income chargeable has been made subject to excessive relief, the explanation cannot override the statutory prescription of limitation as set out in the proviso to Section 147. The purpose of the Explanation is merely to explain the scope of re-assessment as set out in the statutory provision and not to expand on or tinker with the limitation set out thereunder.

11. The impugned order is thus quashed and W.P.No.954 of 2020 is allowed. Connected miscellaneous petitions are closed. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1.The Assistant Commissioner of Income Tax
Corporate Circle 6(1)
7th Floor, Wanaparthi Block
Aayakar Bhavan Nungambakkam
Chennai-600034.

2.Principal Commissioner of Income Tax, Chennai-6
Aayakar Bhavan, Nungambakkam
Chennai-600034.

+lcc to Mr.A.P.Srinivas, Advocate Sr.16020

+lcc to M/s.N.V.Balaji, Advocate Sr.16812

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