IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

WP.NOS.1604 & 1606 OF 2020
AND
WMP.NOS.1876 & 1878 OF 2020 AND 21504 & 21505 OF 2021

[VIDEO CONFERENCING]

W.P.No.1604 of 2020

Pannalal Kochar
New No.43, Ritherdon Road
Vepery, Chennai - 600 007. ....Petitioner

-Vs-

Assistant Commissioner of Income Tax
Non Corporate Circle - 9(1)
121, M.G.Road, Chennai - 600 034. .....Respondent

Prayer :-

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records on the file of the respondent passed in reassessment order u/s. 143 (3) r/w Section 147 of I.T.Act, 1961 in NCC-9(1)/SCRUTINY-147/AACPK5972B/2019-20, dated 30.12.2019 for AY 2012-13 in pursuance to the notice u/s 148 dated 31.03.2019 and quash the same as illegal, without jurisdiction authority of law, barred by limitation and against the principles of natural justice.

W.P.No.1606 of 2020

Pannalal Madan Bai
New No.43, Ritherdon Road
Vepery, Chennai - 600 007. ....Petitioner

-Vs.-

Assistant Commissioner of Income Tax
Non Corporate Circle - 9(1)
121, M.G.Road, Chennai - 600 034. .....Respondent

Prayer :-

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records on the file of the respondent passed in reassessment order u/s. 143 (3) r/w Section 147 of I.T.Act, 1961 in NCC-9(1)/SCRUTINY-147/AAOPP8550C/2019-20, dated 30.12.2019 for AY 2012-13 in pursuance to the notice u/s 148 dated 31.03.2019 and quash the same as illegal, without jurisdiction authority of law, barred by limitation and against the principles of natural justice.

For Petitioner in both WP's : Mr.T.Pramod Kumar Chopda

For Respondent in both WP's : Ms.Hema Muralikrishnan, Senior Standing Counsel

COMMON ORDER

W.P.No.1604 of 2020 has been filed by the petitioner therein challenging the reassessment order u/s. 143(3) r/w Section 147 of I.T.Act, 1961 in NCC-9(1)/SCRUTINY-147/AACPK5972B/2019-20, dated 30.12.2019 for AY 2012-13 in pursuance to the notice u/s 148 dated 31.03.2019.

2.W.P.No.1606 of 2020 has been filed by the petitioner therein challenging the reassessment order u/s. 143(3) r/w Section 147 of I.T.Act, 1961 in NCC-9(1)/SCRUTINY-147/AAOPP8550C/2019-20, dated 30.12.2019 for AY 2012-13 in pursuance to the notice u/s 148 dated 31.03.2019.

3.The learned counsel for the petitioners submits that the respondent had issued notices to the respective Writ Petitioners under Section 148 of the Income Tax Act on 31.03.2019 being the last date of expiry of the limitation for reopening of the assessment under Section 143(3) r/w Section 147 of Income Tax Act, 1961 and has thereafter, proceeded to pass the impugned order in violation of the decision of the Hon'ble Supreme Court in GKN Driveshafts (India) Ltd reported in 259 ITR 119 (SC).

4.The learned counsel for the petitioner submits that the dispute relates to the sale of land and the claim of long term capital gain under the provisions of the Income Tax Act and was subject matter of scrutiny assessment in the year 2014 and assessment orders dated 03.04.2014 were passed by the Assessing Officer under Section 143(3) of the Income Tax Act.

5.The case of the petitioners is that both the petitioners i.e., husband and wife had entered into a Joint Development Agreement (JDA) with the builder on 01.05.2007. It is submitted that over a period of time, they ended up selling their shares i.e., 4 villas allotted to them and 50% of sale consideration in another villa. It is the further case of the petitioners that after notice under Section 148 of the Income Tax Act were issued on 31.03.2019, the petitioners replied to the aforesaid notice on 15.04.2019, pursuant to which a notice under Section 142(1) r/w Section 129 of the Income Tax Act, 1961 was issued for re-assessment by a different officer.

6.It is submitted that though the respondent has issued the reasons for reopening the assessment, the guidelines issued by the Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd reported in 259 ITR 119 (SC) were not followed. On the other hand, the respondent straightaway proceeded to issue the show cause notice and thereafter, disposed the objection on 24.12.2019, copy of which was not served on the petitioner. It is further submitted that the notice dated 27.12.2019 was issued in the forenoon asking the petitioners to appear before the respondent in the evening by 05.15 P.M on the same date. It is submitted that the respondent thereafter proceeded to pass the impugned orders wherein the objection of the petitioners against reopening the assessment was discussed for the first time.

7.The learned counsel for the petitioner further submits that the reasons for rejecting the objection vide communication dated 24.12.2019 was merely based on the decision of the Division Bench of this Court in the case of Dayanidhi Maran vs. Assistant Commissioner of Income Tax in W.P.Nos.3405 and 43944 of 2016 vide order dated 10.10.2018. It is further submitted that the entire procedure followed by the respondent while passing the impugned assessment order was irregular and contrary to the decision of the Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd reported in 259 ITR 119 (SC) and also without considering the objection as to why the assessment cannot be revised in terms of the reasons given for reopening the assessment. The learned counsel for the petitioners therefore submits that the impugned orders are liable to be quashed.

8.Appearing on behalf of the respondent, the learned Senior Standing Counsel submits that the communication dated 24.12.2019 rejecting/over-ruling the objection of the petitioner for reopening the assessment for the assessment year 2012-13 and the subsequent communication dated 27.12.2019 was communicated to the respective petitioners through their designated email id given by them and therefore, there is no question of any violation of principles of natural justice and hence, these Writ Petitions are devoid of merits.

9.The learned Senior Standing Counsel for the respondent further submits that there are several disputed question of facts involved in this case. It is submitted that the petitioners have declared the sale of agricultural land, whereas the petitioners had sold Villas and therefore, there is misrepresentation to the Department both at the time of filing the returns under Section 139 of the Act and thereafter, when the assessment orders came to be passed under Section 143(1) of the Income Tax Act, 1961 on 10.09.2013 and at the time when the subsequent assessment order came to be passed under Section 143 (3) of the Income Tax Act, 1961 for the first time on 03.04.2014 for the petitioner in W.P.No.1604 of 2020.

10.It is further submitted that the petitioners failed to participate and for the first time when the show cause notices were issued on 19.12.2019 and wanted to reset the clock by asking the Department to furnish the reasons for reopening the assessment in terms of decision of the Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd reported in 259 ITR 119 (SC). The learned Senior Standing Counsel appearing for the respondent would therefore submit that the Writ Petitions are liable to be dismissed.

11.Heard the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondent. Perused the notices issued under Section 148 of the Income Tax Act, 1960 and the reasons given for reopening of the assessment on 28.10.2019 and the subsequent communications which culminated in the issuance of the show cause notices and the disposal of the proceedings vide impugned assessment orders dated 30.12.2019.

12.It is the case where there is slight irregularity in the proceedings carried out by the respondent in as much as the decision of the Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd reported in 259 ITR 119 (SC) was not followed. Though the requirement for giving a speaking order is pursuant to the aforesaid decision of the Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd reported in 259 ITR 119 (SC), is doubtful in the light of the change in the method of assessment under the e-assessment. Nevertheless, assessment ought not to have been carried out in a mechanical manner. Though the petitioners have also not replied to the show cause notices, the fact remains that the objections to reopening of the assessment was conveyed after issuing the show cause notices. The petitioners were also not given sufficient time. Thus, there is procedural irregularity while passing the impugned orders.

13.Considering the same, the impugned orders are set aside and the matters are remitted back to the respondent to pass orders afresh on merits. The petitioners are directed to appear before the Competent Authority through Video Conferencing or any other modes either in person or through their authorized representative provided under the rules for completion of the assessment pursuant to the notices issued under Section 148 of the Income Tax Act, 1961 on 31.03.2019. On a date to be fixed the petitioner is at liberty to file additional representation/reply, if any within a period of 15 days from the date of receipt of a copy of this order.

14.The Competent Authority is directed to pass orders in respective cases, preferably within a period of 60 days from the date of receipt of a copy of this order.

15.These Writ Petitions are disposed of in above terms. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

pgp

To

1 Assistant Commissioner of Income Tax
Non Corporate Circle - 9(1)
121, M.G.Road, Chennai - 600 034.

+4ccs to Mr.T.Pramod Kumar Chopda, Advocate, S.R.No.63176,63175
+1cc to Ms.Hema Muralikrishnan, Advocate, S.R.No.62484

W.P.Nos.1604 & 1606 of 2020

SRA(CO)
PM/04/01/2022