IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.2336 of 2020
and
W.M.P.No.2722 of 2020

Seoyon E-Hwa Automotive Chennai
Private Limited
Represented by its Chief Financial Officer
Mr.Dong Ho Lee

… Petitioner

Vs.

The Assistant Commissioner of Income Tax,
Office of the Assistant Commissioner of Income Tax,
Corporate Circle - 6(1)
121, Mahatma Gandhi 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, calling for the records on the files of the respondent herein in 20121182746 dated 30.12.2019 consequently quash the same.

For Petitioner : Ms.Durgasri
For Mr.V.Veeraraghavan

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

ORDER

Heard Ms.Durgasri, learned for Mr.V.Veeraghavan,, learned counsel for the petitioner and Mr.A.P.Srinivas, learned Senior Standing Counsel for the revenue.

2. The impugned order of assessment, passed in terms of the provisions of Section 147 read with Section 143(3) of the Income Tax Act, 1961, is dated 30.12.2019. When the matter came up for admission on 31.01.2020, I have passed the following order:

> Mr.A.P.Srinivas, learned Senior Standing Counsel accepts notice for the respondents and seeks some time to obtain instructions and file a counter.
>
> 2. The impugned proceedings for re-assessment relate to Assessment Year (A.Y.) 2012-13. Notice under Section 148 of the Income Tax Act, 1961 (in short 'Act') has been issued on the last day of expiry of limitation, i.e., 30.03.2019, in any event beyond the period of four years from the end of the relevant assessment year.
>
> 3. On 12.04.2019, the petitioner has complied with the requirement of filing of return and sought reasons. This communication appears to have filed before the Office of the Additional/Joint Commissioner of Income Tax, received on 12.04.2019.
>
> 4. On 08.11.2019, a show cause notice was issued, once again calling upon the petitioner to file a response to notice under Section 148 of the Act. Under reply dated 28.11.2019, again filed before the Office of the Additional/Joint Commissioner of Income Tax, the petitioner reiterated the supply of reasons.
>
> 5. On 26.12.2019, reasons have been furnished and on the same day a questionnaire under Section 142(1) issued, calling upon the assessee to explain why re-assessment not be completed as proposed in the notice and listing the matter on 27.12.2019, at 11.00 a.m. On 30.12.2019, some time for reply is sought by the petitioner.
>
> 6. However, the order of assessment has been passed on the same day, i.e., on 30.12.2019, impugned in this Writ Petition.
>
> 7. The procedure for re-assessment in line with the prescription of the Supreme Court in GKN Drive Shafts V. ITO (259 ITR 1) appears prima facie not to have been followed. The relevant portion of the 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.

8. Moreover and prima facie, there has been patent disregard to the principles of natural justice, as may be seen from the sequence of dates and events narrated above.

9. Interim stay of recovery alone.

10. List on 25.02.2020. Counter be filed by then with an advance copy served on the petitioner.

3. The sequence of dates and events set out above are not in dispute and I am thus of the view that there is a violation in following the procedure for re-assessment as set out by the Supreme Court in the case of GKN Drive Shafts V. ITO (259 ITR 19) where in conclusion, the Bench states as follows:

> 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'.

4. In the light of the above, the impugned order dated 30.12.2019 is set aside. The petitioner is permitted to file objections to the assumption of jurisdiction within a period of four (4) weeks from date of uploading of this order and an order be passed either accepting or rejecting the same within a period of three (3) weeks from date of receipt of objections, after hearing the petitioner. Proceedings for assessment, if any all, shall be initiated in accordance with law, thereafter.

5. The Writ Petition is allowed in the aforesaid terms. No costs. Connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

Sl

To

The Assistant Commissioner of Income Tax,
Office of the Assistant Commissioner of Income Tax,
Corporate Circle - 6(1)
121, Mahatma Gandhi Road,
Nungambakkam, Chennai - 34.

+1cc to Mr.A.P.Srinivas, Advocate Sr.4312
+1cc to Mr.V.Veeraraghavan, Advocate Sr.4877

W.P. No.2336 of 2020
and
W.M.P.No.2722 of 2020

gsm[co]
srg 19/02/2021