IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.2728 & 2733 of 2019
and
W.M.P.Nos.2983, 2985, 2986, 2992, 2995 & 2996 of 2019

(Through Video Conferencing)

M/s. K.G.Metal Precision Private Limited
Represented by its Managing Director S.Solochana,
No.364, Sundarapuram,
Anna Nagar East,
Chennai 602 102. ... Petitioner in both W.Ps

Vs

The Assistant Commissioner of Income Tax,
Corporate Circle - 4 (2), Room No.433,
4th Floor, Main Building, AayakarBhavan,
121, M.G. Road,
Chennai - 600 034. ... Respondent in both W.Ps

Prayer in W.P.No.2728 of 2019: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the 1st Respondent contained in its notice issued under Section 148 of the Income Tax Act, 1961, for PAN:AACCK3386J, dated 29.03.2016, for Assessment Year 2010-2011, and all proceedings in furtherance thereof, including the assessment order issued under Section 144 r.w.s. 143 (3) r.w.s. 147 of the Income Tax Act, 1961, dated 28.12.2018, for Assessment Year 2010-2011, and to quash the same.

Prayer in W.P.No.2733 of 2019: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the 1st Respondent contained in its notice issued under Section 148 of the Income Tax Act, 1961, for PAN:AACCK3386J, dated 31.03.2018, for Assessment Year 2011-2012, and all proceedings in furtherance thereof, including the assessment order issued under Section 144 r.w.s. 143 (3) r.w.s. 147 of the Income Tax Act, 1961, dated 28.12.2018, for Assessment Year 2011-2012, and to quash the same.

For Petitioner (in both W.Ps) : Mrs.Ashwini Vaidialingam for M/s.Arun Karthik Mohan

For Respondent (in both W.Ps) : Mrs.Hema Muralikrishnan Senior Standing Counsel

COMMON ORDER

By this common order, both these writ petitions are being disposed of.

2. The petitioner has challenged the Impugned Assessment Order dated 28.12.2018 for the Assessment Years 2010-2011 and 2011-2012 respectively.

3. It is the case of the petitioner that the notices for reopening the assessment for the respective Assessment Years were issued on 31.03.2017, and 29.03.2016. The learned counsel for the petitioner submits that after the petitioner was called upon the respondent to furnish the reasons for reopening of the Assessment, the respondent has directly proceeded to pass the Impugned Assessment Order on 28.12.2018 without passing a speaking order and therefore submits the case may be remitted back to the respondent by directing the respondent to consider the objections filed by the petitioner on 28.12.2018.

4. Opposing the prayer, the learned Senior Standing Counsel for the respondent submits that as far as the Assessment Year 2011-2012 is concerned, the petitioner had not filed any response in time and therefore, after the reasons were furnished for reopening the Assessment on 06.12.2018, the impugned orders were passed on 28.12.2018.

5. The learned Senior Standing Counsel for the respondent further submits Assessment have been completed within the time in terms of Section 153(2) of the Income Tax Act, 1961, and therefore the Assessment orders were passed within a period of nine months from the date of notice of the Income Tax Act,1961. It is submitted that the writ petitions lack merits and are liable to be dismissed by directing the petitioner to workout the remedy by filing appeal before the Appellate Commissioner under Section 246A of the Income Tax Act, 1961.

6. Heard the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondent and perused the impugned Assessment Orders.

7. It is noticed that though the petitioner has not been filed a reply to Section 143(2) notice issued by the respondent for the Assessment Year 2011-2012. The facts also indicates that the reasons for reopening the Assessment for the respective years were communicated to the petitioner vide communication dated 06.12.2018.

8. Thereafter, the orders have been passed on 28.12.2018, as Assessment orders have to be passed within the time. Therefore, no fault can be found with the respondent as otherwise entire exercise taken would have lapsed due to

limitation.

9. Nevertheless, the fact remains that the petitioner has also sent a representation/objection on 28.12.2018, the date on which the Impugned Orders have been passed without a speaking order proceeding these orders.

10. Considering the above, the Impugned Assessment Orders are quashed and the cases are remitted back to the respondent to pass a speaking order in terms of the decision of the Hon'ble Supreme Court in GKN Driveshafts (India) Limited Vs. Income Tax Officer and Ors [2003] 259 ITR 19 (SC) and to thereafter pass appropriate Assessment Order. Since the dispute pertains to the Assessment Years 2010-2011 and 2011-2012, the respondent may pass a speaking order preferably within a period of thirty (30) days from the date of receipt of a copy of this order based on the representation/objection filed by the petitioner on 28.12.2018 in accordance with law and on merits. The respondent shall pass Assessment order within a period of thirty (30) days thereafter.

11. Accordingly, these writ petitions stand disposed of with the above observations. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

jas/rgm

To

The Assistant Commissioner of Income Tax,
Corporate Circle - 4 (2), Room No.433,
4th Floor, Main Building, AayakarBhavan,
121, M.G. Road, Chennai - 600 034.

+2ccs to Mr.Suhrith Parthasarathy, Advocate SR.No.64289

+1cc to Ms.Hema Muralikrishnan, Advocate SR.No.64251

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VG II(CO)
GMY(04/01/2022)