IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 09.03.2021
CORAM
THE HON'BLE MR.JUSTICE C.SARAVANAN
W.P.No.28943 of 2010
and
M.P.No.1 of 2010

(Through Video Conferencing)

M/s. Kothari Sugars and Chemicals Limited,
"Kothari Buildings",
No.115, Mahatma Gandhi Salai,
Nungambakkam, Chennai - 34.
Rep by its Chairman and Managing Director,
Shri B.H.Kothari. ... Petitioner

Vs.

The Deputy Commissioner of Income Tax,
Company Circle II (4),
Nungambakkam, Chennai 34. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the petitioner for assessment year 2003-2004 in AAACK8998A on the file of the respondent and quash the impugned order passed u/s.147 dated 26.11.2010 and direct the respondent to drop the proceedings initiated in pursuance of notice u/s.148 dated 18.03.2010.

For Petitioner : Mr.Vikram Vijayaraghavan
for M/s.Subbarayaaiyar Padmanabhan

For Respondent : M/s. Hema Muralikrishnan
Senior Standing Counsel

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O R D E R

The petitioner has challenged the impugned proceedings seeking to reopen the assessment for the Assessment Year 2003-2004. The original assessment under Section 143(3) of the Income Tax Act, 1961 was completed on 12.03.2004 and thereafter the order was rectified by an order dated 28.05.2004 under Section154 of the Act.

2. The reasons communicated for rectifying order passed under Section 143(1) of the Act are as follows:-

1. The assessment/refund order under section 143 (1) for the assessment year 03-04 made on

12/3/04 requires to be amended as there is a mistake apparent from the record within the meaning of Section 154 of the Income-tax Act, 1961. The rectification of the mistake, as per particulars given below, will have the effect of enhancing the assessment / reducing the refund / increasing your liability.

2. If you wish to be heard, your are requested to appear in person or through an authorised representative in my offfice on 09/06/04 at 11:00 a.m. Alternatively you may send a written reply so as to reach me on or before the date mentioned above.

3. Thereafter, a notice under Section 148 of the Income Tax Act, 1961 was issued to the petitioner on 06.07.2004. The reasons for reopening the assessment order passed under Section 143(1) of the Act was communicated to the petitioner vide communication dated 23.09.2004. It reads as follows:-

In the annual report filed along with the return of income for the Asst. Year 2002-03*, the company has claimed provision for doubtful advances of Rs.54.42 lakhs and provision for dimunition in investment of Rs.1.51 lakhs. As per the income tax Act, provision is not an allowable expenditure. Moreover the company has also claimed interest on Term loan waived on one time settlement of Rs.8,71,34,000/- and principal amount waived on one time settlement of Rs.16,79,08,000/-. As these are clearly capital in nature, the same are not allowable. For these reasons, the assessment is re-opened.

* 2003-04

4. Thereafter, the assessment order came to be passed on 30.03.2006 under Section 143(3) of the Income Tax Act, 1961 after a detailed enquiry pertaining to the waiver of principal amount of Rs.16,79,07,750/-. After the assessment order was completed on 30.03.2006, for the Assessment Year 2003-2004, the department once again invoked the jurisdiction under Section 148 by issuing a notice dated 18.03.2010. The purported reasons for reopening the assessment was communicated to the petitioner vide communication dated 25.10.2010. In the communication dated 25.10.2010, the reasons for reopening the assessment are stated as follows:-

It is seen from the computation statement that the assessee had deducted a sum of Rs.16.79 crores from the profits. This amount relates to principal amount of loans waived on one time settlement by banks and financial institutions which was credited to P&L A/c. As per sec.41 (1), any remission or cessation of liability is deemed to be profits of business chargeable to income-tax. While scrutinizing the case for AY 2005-06 u/s 143(3) r.w.Sec.147, it is gathered that the assessee got its loan amounting to Rs.16.79 crores waived through OTS.

5. The petitioner thereafter filed its objections which has been overruled by the respondent vide communication dated 26.11.2010 which has been challenged in this Writ Petition.

6. Heard the learned counsel for the petitioner and the learned standing counsel for the respondent.

7. Though elaborate submissions were made by the learned counsel for the petitioner, I am inclined to allow this Writ Petition as there is no case made out for invoking proviso to Section 147 of the Income Tax Act, 1961. It is further noticed that on merits also, the issue is now covered by the orders passed for the subsequent Assessment Year, i.e. 2005-2006. The appeal preferred by the department against the order 20.07.2011 of this Court in Tax Case (Appeal) No.274 of 2011 before Hon'ble Supreme Court has been dismissed by an order dated 24.04.2018 in Civil Appeal No.780 of 2012. It has been held that provisions of Section 41(1) of the Income Tax Act, 1961 does not apply since the waiver of loan does not amount to cessation of trading liability.

8. Since the issue is now squarely covered in favour of the petitioner by the order dated 20.07.2011 of this Court in the above petitioner's own case in Tax Case (Appeal) No.274 of 2011 which has been affirmed by the Hon'ble Supreme Court by its order dated 24.04.2018 in Civil Appeal No.780 of 2012, I find no merits in the impugned proceedings of the respondent seeking to reopen the assessment for the Assessment Year 2003-2004 and in the impugned communication overruling the objections of the petitioner. Therefore, the impugned proceedings are quashed as the issue is covered in favour of the petitioner on merits.

9. Thus, this Writ Petition stands allowed. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

The Deputy Commissioner of Income Tax,
Company Circle II (4),
Nungambakkam, Chennai 34.

+1cc to M/s.Hema Muralikrishnan, Advocate, S.R.No.15016.
+1cc to Mr.Subbaraya Aiyar Padmanabhan, Advocate,
S.R.No.15067.

W.P.No.28943 of 2010
and M.P.No.1 of 2010

PMK(CO)
CSR 01.04.2021