

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	19.02.2021
Pronounced On	17.04.2021

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.28967 of 2010

and

M.P.No.1 of 2010

(Through Video Conferencing)

M/s.Metafilms (India) Ltd.,
Rep. by its Director V.Rajendran,
157/1, GNT Road,
Chinnambedu P.O.,
Kavarapet, Tamil Nadu - 601 206. ... Petitioner

Vs.

The Assistant Commissioner of Income Tax,
Company Circle IV (2),
Room No.431, 4th Floor, Main Building,
121, M.G.Road,
Nungambakkam, Chennai - 600 034. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records in PAN : AAACM6975F/2003-04 dated 03.09.2010 read with notice under Sec. 148 of the Income Tax Act, 1961, P.A. No.AAACM6975F dated 17.03.2010 relating to the Assessment Year 2003-04 on the file of the respondent and quash the same.

For Petitioner : Mr.G.Baskar for
Mr.N.Muthukumar

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

O R D E R

The petitioner has challenged the re-opening of the Assessment vide impugned notice dated 17.03.2010 for the Assessment Year 2003-2004 and the impugned communication dated 03.09.2010 bearing reference PAN:AAACM6975F/2003-2004 for the

Assessment Year 2003-overruling the objection of the petitioner for re-opening of the completed assessment.

2. The petitioner had filed income tax return for the Assessment Year 2003-2004 belatedly on 06.07.2004. There the petitioner had declared the loss of income from business as Rs.3,66,77,842/-. At the time of filing of the return on 06.07.2004, the petitioner had enclosed a copy of the financial statement which included the report of the auditor to the shareholder of the petitioner M/s.Metafilms (India) Limited.

3. The learned counsel for the petitioner further submits that though the petitioner had boosted the income by adding waiver of interest for a sum of Rs.9,01,80,464/-, it was wrongly shown by the petitioner for making profit and had given a report along with the financial statements of the petitioner's company on 03.09.2003. In the report, it was stated as follows:-

The Company has entered into discussions with the financial institutions for a one-time settlement scheme. Pending final approval from the financial institutions, the company has written back the interest due to these financial institutions (refer note 3(v) of Schedule 14 financial statements). This in our opinion is incorrect and is in violation of Fundamental Accounting Assumption of "Accrual" as advocated by Accounting Standard-1 - Disclosure of Accounting Policies issued by the Institute of Chartered Accountants of India. The Secured Loans and the Losses of the company have been understated to the extent of interest written back. Subject to the above, in our opinion, the balance sheet and the profit and loss account dealt with by this report are in compliance with the Accounting Standards referred to in sub-section (3C) of Section 211 of the Companies Act, 1956 to the extent applicable thereto.

4. The learned counsel for the petitioner further submits that the Assessing Officer passed a scrutiny assessment order under Section 143(3) of the Income Tax Act, 1961 after scrutinizing the records which included the financial statements and that the explanations were given pursuant to notice under Section 143(2) dated 27.07.2005, notice under Section 143(1) dated 19.08.2004 and detailed questionnaires dated 31.08.2005, 09.09.2005 and 06.03.2005. It is further submitted that after scrutiny of all the records, the Assessing Officer came to a conclusion that the petitioner had incurred the total loss of Rs.3,66,77,842/-. It is further submitted that the assessment

order was passed on 30.03.2006. Just 30 days before the expiry of limitations, notice dated 17.03.2010 was issued under Section 148 of the income Tax Act, 1961. It is this notice is challenged in this Writ Petition.

5. The learned counsel for the petitioner further submits that the reason given by the respondent for re-opening the assessment was that the petitioner had filed belated return on 06.07.2004 and therefore not entitled to carry forward the loss the loss to subsequent years and that the petitioner had shown an amount of Rs.9,01,80,464/- as other income in its profit and loss account.

6. The learned counsel for the petitioner further submits that the for invoking the jurisdiction, as per proviso to Section 147 of the Income Tax Act, 1961, there should have been a failure to disclose truly and fully all informations that were required for the purpose of assessment under Section 139 of the Income Tax Act, 1961 or in response to a notice issued under Section 142 or under Section 148 of the Income Tax Act. In this case, there is no failure to disclose fully and truly all material facts that were necessary for the assessment. He further submitted that neither the reason for reopening the assessment vide communication dated 03.06.2010 nor the speaking order impugned in this Writ Petition dated 03.09.2010 alleged that the petitioner had failed to truly and fully disclose all material facts necessary for the assessment.

7. The learned counsel for the petitioner further submits that the petitioner company was a Sick company as is evident from the financial statement filed along with the returns as the petitioner company had been declared as a Sick Company under Section 17 of the Sick Industrial Companies (Special Provisions) Act, 1985. The learned counsel for the petitioner therefore submits that the entire issue was an academic issue as the petitioner would have been entitled to carry forward the loss.

8. The learned counsel for the petitioner drew my attention to the following:

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Sl. No.	Proposition	Case Law
1	Disclosure in 'Notes on Accounts' annexed to the Balance Sheet is full and true disclosure. In case of scrutiny assessment and reopening beyond 4 years, the notice has to prima facie show the materials which point out the failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment.	Commissioner of Income Tax Vs. Eco Media (P.) Ltd., 2012 SCC OnLine Mad 1439.
2	Where primary facts were disclosed in the return, it cannot be said that income chargeable to tax which had escaped assessment came to the notice only subsequently. Further, if the Assessee separately indicates the receipts in the income tax returns, Explanation (1) to Section 147 is not attracted.	Principal Commissioner of Income-tax 6 Vs. Santech Solutions Pvt. Ltd., - [2019] 263 Taxman 248 (SC).
3	Duty of assessee is limited to fully and truly disclose all material facts, failure of AO to reach warranted conclusion could not confer jurisdiction for reopening assessment.	Calcutta Discount Co. Ltd Vs. Income Tax Officer, [1961] 41 ITR 191 (SC).
4		Fenner (India) Ltd. Vs. Deputy Commissioner of Income Tax, (2000) 241 ITR 0672: (1999) 107 TAXMAN 0053.
5	When Assessee makes full disclosure of all irrelevant facts, reopening beyond 4 years is illegal. If Revenue seeks to invoke Explanation to Section 147m it must first satisfy the Proviso to Section 147	Asianet Star Communications (P.) Ltd. Vs Assistant Commissioner of Income-tax, Non-Corporate circle 20(1), [2020] 422 ITR 47.

9. A reference was also made to the decision of this Court in Asianet Star Communications (P.) Ltd. Vs Assistant

Commissioner of Income-tax, Non-Corporate circle 20(1), [2020] 422 ITR 47, wherein, this has Court concluded as follows:-

"24. The notice under Section 148 in respect of AY 2011- 12 has been issued by the respondent after the expiry of four years but before expiry of six years from the last date of the assessment year in question. The provisions of section 147 set out a limitation of four years for proceedings to be initiated for escapement of income, and a further period of two years provided that the Revenue is in a position to establish that the escapement had been occasioned by virtue of failure on the part of the assessee to either file a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or 148 or to disclose fully and truly all material facts necessary for the assessment for the relevant assessment year.

25. All details of the claims, such as the break-up of the amounts of the specific programmes/events/movies that the expenditure relates to, have been provided along with the returns of income and at the time of original assessment and are a matter of record".

10. The learned counsel for the petitioner further submits that proviso to Section 147 of Income Tax Act is not applicable and therefore prays for quashing the impugned notice dated 17.03.2010 and the communication dated 03.09.2010.

11. Defending the impugned order, the learned counsel for the respondent submits that mere production of account books or evidence or other evidence from which material evidence could with due diligence have been discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of Section 147 of the Income Tax Act, 1961.

12. The learned counsel for the respondent further submits that even as per Sub-Clause (c) to Explanation -2, the respondent is entitled to invoke the jurisdiction to re-open the assessment before the expiry of limitation under proviso to Section 147 of the Income Tax Act. Finally, the learned counsel for the respondent drew my attention to the decision of the Hon'ble Supreme Court in Calcutta Discount Co. Ltd Vs. Income Tax Officer, [1961] 41 ITR 191 (SC) which was relied by the learned counsel for the petitioner, wherein, the Court held as follows:-

"There can be no doubt that the duty of disclosing all the primary facts relevant to the decision of the question before the assessing authority lies on the assessee to meet the possible contention that when some account books or other evidence has been produced, there is no duty on the assessee to disclose further facts, which on due diligence, the Income-tax Officer might have discovered, the Legislature has put in the Explanation, which has been set out above. In view of the Explanation, it will not be open to the assessee to say, for example - "I have produced the account books and the documents: you, the assessing officer, examine them, and find out the facts necessary for your purpose: My duty is done with disclosing these account books and the documents." His omission to bring, the assessing authority's attention those particular items in the account books, or the particular portions of the documents, which are relevant, will amount to "omission to disclose fully and truly all material facts necessary for his assessment." Nor will he be above to contend successfully that by disclosing certain evidence, he should be deemed to have disclosed other evidence, which might have been discovered by the assessing authority if he had pursued investigation on the basis of what has been disclosed. The Explanation to the section gives a quietus to all such contentions; and the position remains that so far as primary facts are concerned, it is the assessee's duty to disclose all of them including particular entries in account books, particular portions of documents, and documents and other evidence which could have been discovered by the assessing authority, from the documents and other evidence disclosed".

13. She therefore submits that this Writ Petition was without any merits and therefore is liable to be dismissed.

14. Heard the learned counsel for the petitioner and the learned senior standing counsel for the respondent.

15. The petitioner being a company is liable to pay Minimum Alternate Tax under Section 115JB of the Income Tax Act, 1961 if the tax payable on book profit was more than the tax payable under normal method of computation of income tax.

16. In this case, the petitioner declared a business loss of Rs.3,66,77,842/- in the returns filed on 06.07.2004 and claimed a refund of Rs.61,494/-.

17. The return filed by the petitioner was accepted under an intimation under Section 143(1) of the Income Tax Act, 1961. Thereafter, the returns were scrutinised and an assessment order was passed on 30.03.2006 under Section 143(3) of the Income Tax Act, 1961. It was passed after hearing the petitioner on various dates between 23.09.2005 and 13.03.2006.

18. In the assessment order dated 30.03.2006 passed under Section 143(3) of the Income Tax Act, 1961, it has been merely stated that the petitioner company had been leased out to M/s.Paharpur Industries Ltd. and a lease rent charges has been treated as conversion charges and that the assessment was completed treating the conversion charges as rent and the expenditure relating to the manufacturing activity was reimbursed by M/s.Paharpur Industries Ltd.

19. Thus, the focus was only on the income derived from the said company. It was not on the method of computation of the income. There is no discussion on the issues relating to the computation of the loss. The said order aslo does not indicate as to whether there was any discussion regarding the reasons given for reopening of the assessment in a communication dated 30.06.2010 while passing the aforesaid assessment order.

20. While computing the book profit, the petitioner has deducted amounts from the gross income of Rs.1,01,35,842/- [income from sales for a sum Rs.10,34,33 + Rs.91,01,609/- as other income].

21. The petitioner has shown Rs.3,22,71,677/- as loss before taxation. The petitioner has added another sum of Rs.10,56,486/- being the alleged miscellaneous expenditure written off and thereby arrived at the total loss for the year as Rs.3,33,28,163/-.

22. After arriving at the aforesaid loss for the year, the petitioner has reduced the aforesaid loss by setting off an amount of Rs.9,01,80,464/- being the notional income from the waiver of interest to arrive at net loss of Rs.5,68,52,301/-.

23. From the aforesaid loss, the petitioner has further deducted/reduced the loss brought forward from the previous year amounting to Rs.13,99,07,653/- to arrive at the total loss of Rs.8,30,55,352/- [Rs.13,99,07,653 -Rs.5,68,52,301].

24. Correctness of the computation of net loss for the purpose of arriving at the book loss and for the purpose of Minimum Alternate Tax in contrast with the returns filed under Section 139 of the Income Tax Act in a refund of Rs.61,494/- cannot be tested under Article 226 of the Constitution of India. Scope of enquiry under Article 226 of the Constitution of India is limited. It is best left to the Assessing Officer/Authorities in the hierarchy prescribed under the provisions of the Income Tax Act, 1961 to look into it.

25. Mere declaration in the Auditors Report to the shareholders of the petitioner that as on 03.09.2003, the secured loans and the losses of the company have been understated to the extent of interest written back and the balance sheet and the profit and loss account dealt with in the said report were in compliance with the Accounting Standards referred to in Sub-Section (3C) of Section 211 of the Companies Act, 1956 is not sufficient to conclude that there was true and full disclosure by the petitioner at the time of filing of income tax returns for the purpose of assessment.

26. The computation of income as per the Companies Act, 1956 seems to indicate that the petitioner had a whopping loss of Rs.13,99,07,652/- which was carried forward into the Assessment Year 2002-03 apart from the loss incurred during the financial year 2001-02 amounting to Rs.3,33,28,163/-. Therefore, it is not clear as to how the petitioner is aggrieved by the impugned re-opening of the assessment vide notice dated 17.03.2010 and the impugned speaking order dated 03.09.2010. Even according to the petitioner, the entire exercise was an academic exercise and a harassment as no additional tax was to be paid by the petitioner. It is therefore not clear why the petitioner is fighting shy from participating in the aforesaid proceedings. After all, the speaking order merely shows a prima facie view of the Income Tax Department to justify the re-opening of the assessment. It is not conclusive and it is open for the petitioner to meet of the points before the respondent by participating in the proceeding and persuade the respondent Income Tax Officer to drop the proceedings.

27. Therefore, I do not find any merits in this Writ Petition. I am therefore inclined to dismiss this Writ Petition while giving liberty to the petitioner to file additional submissions/representations with the respondent making its stand clear as to how the assessment that has been completed on 30.3.2006 has to be re-affirmed again.

28. The petitioner is therefore directed to give its additional reply/representation, if any, within a period of

thirty days from date of receipt of a copy of this order. The respondent shall thereafter pass appropriate orders on merits in accordance with law. Needless to state, if desired, the petitioner shall also be heard through video conference through their authorised representatives. Entire exercise shall be completed within a period of ninety days from date of receipt of a copy of this order.

29. Accordingly, this Writ Petition stands dismissed with the above liberty and observations. No cost. Consequently, connected Miscellaneous Petition is closed.

s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

The Assistant Commissioner of Income Tax,
Company Circle IV (2),
Room No.431, 4th Floor, Main Building,
121, M.G.Road,
Nungambakkam, Chennai - 600 034.

+1 CC to Mr.N. Muthukumar, Advocate sr 23477

+1 CC to M/s. Hema Muralikrishnan, Advocate sr 23298.

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PCH(CO)
SP(18/05/2021)

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