IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.03.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. Nos. 15211, 15213 & 15214 of 2016
and
W.M.P. Nos. 13261, 13263 to 13265 of 2016

M/s.Bharani Hospitals Pvt. Ltd.,
Represented by its Director,
Dr.Bharani R Paluvai,
22, Arcot Road,
Saligramam, Chennai - 600 093. ...Petitioner in all W.Ps

Vs

The Income Tax Officer,
Corporate Ward 1(2),
Room No.614, 6th Floor,
New Block, Aayakar Bhavan,
121 MG Road, Nungambakkam,
Chennai - 600 034. ...Respondent in all W.Ps

Prayer in W.P.No.15211 of 2016: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the Respondent contained in its impugned assessment order dated 15.03.2016, passed under Section 16 read with Section 17 of the Wealth Tax Act, 1957, in PAN No.AAACB2392P, for the assessment year 2008-09, and to quash the same together with all consequent notices, and to consequently forebear the respondent or any of its subordinates, agents or any other person claiming under the Respondent from reassessing the Petitioner's wealth tax for the assessment year 2008-09 under Section 17 of the Wealth Tax Act, 1957.

Prayer in W.P.No.15213 of 2016: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the Respondent contained in its impugned assessment order dated 15.03.2016, passed under Section 16 read with Section 17 of the Wealth Tax Act, 1957, in PAN No.AAACB2392P, for the assessment year 2010-11, and to quash the same together with all consequent notices, and to consequently forebear the respondent or any of its subordinates, agents or any other person claiming under the Respondent from reassessing the Petitioner's wealth tax for the assessment year 2010-11 under Section 17 of the Wealth Tax Act, 1957.

Prayer in W.P.No.15214 of 2016: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the Respondent contained in its impugned assessment order dated 15.03.2016, passed under Section 16 read with Section 17 of the Wealth Tax Act, 1957, in PAN No.AAACB2392P, for the assessment year 2009-10, and to quash the same together with all consequent notices, and to consequently forebear the respondent or any of its subordinates, agents or any other person claiming under the Respondent from reassessing the Petitioner's wealth tax for the assessment year 2009-10 under Section 17 of the Wealth Tax Act, 1957.

For Petitioner : Mr.Suhrith Parthasarathy (in all W.Ps)

For Respondent : Ms.Hema Muralikrishnan Senior Standing Counsel (in all W.Ps)

COMMON ORDER

By this common order, all the writ petitions are being disposed of.

2. In these writ petitions, the petitioner has challenged the assessment orders dated 15.03.2016 passed under Section 18 (1)(c) of the Wealth Tax Act, 1957. The impugned orders have been passed for the Assessment Years 2008-2009, 2009-2010 & 2010-2011. The impugned orders preceded the issue on a notice under Section 17 of the Wealth Tax Act, 1957, which is pari materia with Section 147 of the Income Tax Act, 1961.

3. The petitioner requested the respondent to furnish the reasons for reopening of the assessment which was furnished by a communication dated 16.10.2015. Thereafter, the impugned orders have been passed. The impugned orders are assailed primarily on the ground that the respondent has bypassed the procedure prescribed by the Hon'ble Supreme Court in G.K.N.Driveshafts (India) Ltd. Vs. Income Tax Officer and Others, (2003) 259 ITR 19 (SC).

4. The learned counsel for the petitioner submits that the issue is also covered by the decision of the Gujarat High Court in Arvind Mills Ltd., Vs Assistant Commissioner of Wealth Tax, [2004] 270 ITR 467, wherein, the Division Bench of this Court following the decision of the Hon'ble Supreme Court in G.K.N.Driveshafts Case (Referred to supra) and held that the respondent enjoined to pass a speaking order.

5. The learned senior standing counsel for the respondent submits that the impugned order is well-reasoned and requires no interference inasmuch as the petitioner also participated in the assessment proceedings before the impugned orders came to be passed. She therefore submits that the impugned orders are liable to be sustained and these writ petitions are liable to be dismissed.

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

7. There is no dispute in the facts and circumstances of the case that no speaking order was passed before passing the impugned Assessment Orders. The provisions of the Income Tax Act, Wealth Tax Act as far as the reopening of the assessments are concerned are pari materia with Section 17 of the Wealth Tax Act, 1957 and Section 147 of the Income Tax Act, 1961.

Section 17 of the Wealth Tax Act	Section 147 of the Income Tax Act
If the Assessing Officer (has to believe) that the net wealth chargeable to tax in respect of which any person is assessable under this Act has escaped assessment for any assessment year (whether by reason of under- assessment or assessment at too low a rate or otherwise), he may, subject to the other provisions of this section and section 17A, serve on such person a notice requiring him to furnish within such period as may be specified in the notice, a return in the prescribed form and verified in the prescribed manner setting forth the next wealth in respect of which such person is assessable as on the valuation date mentioned in the notice, along with such other particulars as may be required by the notice, and may proceed to assess or reassess such net wealth and also any other net wealth chargeable to tax in respect of which such person is assessable, which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section for the assessment year concerned (hereinafter in this section referred to as the relevant assessment year), and the provisions of this Act shall, so far as may be, apply as if the returns were a return required to	If the [Assessing] Officer [has reason to believe] that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year)

8. It has been rightly contended by the learned counsel for the petitioner, the decision of the Hon'ble Supreme Court in G.K.N.Driveshafts case (referred to supra) is to be applied even for re-opening of assessment under the Wealth Tax Act, 1957. I am therefore of the view, the impugned order deserves to be set aside. Accordingly, I remit the case back to the respondent to pass a speaking orders on merits in accordance with law following the decision of the Hon'ble Supreme Court in G.K.N.Driveshafts case.

9. Such orders shall be passed within a period of three months from the date of receipt of a copy of this order subject to the compliance of the procedure as per the provisions of the Wealth Tax Act, 1957 and the relevant rules as in force. If the petitioner is entrusted to participate in the proceedings, the respondent shall hear the petitioner or the petitioner's representative through Video Conferencing.

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

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

The Income Tax Officer,
Corporate Ward 1(2),
Room No.614, 6th Floor,
New Block, Aayakar Bhavan,
121 MG Road, Nungambakkam,
Chennai - 600 034.

+1cc to M/s.Hema Murlikrishnan, Advocate, Sr.No.19464
+3cc to M/s.Arun Karthik Mohan, Advocate, Sr.No.19423,19422,19424

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and
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PMK(CO)
baf 05/5/2021