IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2021

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.27024 of 2011
and M.P.No.2 of 2011

M/s.Super Spinning Mills Limited,
Elgi Towers, 737-D Green Fields,
P.B.No.7113, Coimbatore,
Rep.by its Managing Director,
Sumanth Ramamurthi ...Petitioner

Vs.

1.The Deputy Commissioner of Income Tax,
Company Circle – I(2),
Coimbatore.

2.The Assistant Commissioner of Income Tax,
Company Circle 1(2),
Coimbatore. ...Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India to issue of Writ of Certiorari, calling for the records in proceedings u/s.147 in PAN No.AADCS0672G for the AY 2004 – 05 on the file of the 2nd respondent herein initiated by issuing the notice u/S.148 dated 07.03.2011 by the 1st respondent and quash the same.

For Petitioner : Mr.K.Ravi

For Respondents : Mr.A.P.Srinivas, Senior Panel Counsel

O R D E R

The writ on hand is filed to call for the records in pursuance to the proceedings initiated under Section 147 of the Income Tax Act for the Assessment Year 2004 – 05 and the notice issued under Section 148 of the Act, dated 07.03.2011 and quash the same.

2. The petitioner is a Company filed its return of income for the Assessment Year 2004 – 05 admitting an income of Rs.798.57 Lakhs on 29.10.2004. The petitioner Company had

claimed a sum of Rs.70.44 lakhs towards VRS payments during the year and a sum of Rs.1,24,28,606/- as a deduction u/s. 80 HHC of the Income Tax Act, 1961. The return of income was accepted and processed under Section 143 (1) on 25.01.2005. Scrutiny Assessment proceedings were initiated by issuing notice under Section 142 (2) on 12.05.2005. Subsequently, a notice under Section 142 (1) was issued on 18.07.2006 and assessment was completed under Section 143 (3) on 29.12.2006.

3. The petitioner not satisfied with the assessment order passed by the Assessing Officer, preferred an appeal before the Commissioner of Income Tax (Appeals) and the Commissioner (Appeals), partly allowed the appeal on certain terms. The petitioner further preferred an appeal before the Income Tax Appellate Tribunal on the issue pertaining to the disallowance of claim under Section 80 IA in ITA No.979/Mds/2008. The Income Tax Department went on an appeal on the issue of replacement of machinery and allowance of bad debts, in ITA No.1135/Mds/2008.

4. The Income Tax Appellate Tribunal in the petitioner's appeal in ITA No.979/Mds/2008 had set aside the issue pertaining to the disallowance of deduction under Section 80 IA for fresh consideration. Subsequently, the first respondent, vide order dated 29.12.2010, had allowed the claim of deduction under Section 80 IA of the Income Tax Act.

5. In respect of the Department's appeal in ITA No.1129/Mds/2008, carried the issue of replacement of machinery and disallowance of bad debts, the Income Tax Appellate Tribunal had decided the issue of replacement of machinery in favour of the Department by following the decision of the Hon'ble Supreme Court in the case of M/s.Mangayarkarasi Mills, reported in 315 ITR 114 (SC), on the issue of disallowance of bad debts, the adjudication was not made on this issue and subsequently, the petitioner-company filed the miscellaneous petition in MA No.8/Chny/2010 and vide order dated 07.05.2010, the Income Tax Appellate Tribunal was allowed the same.

6. The Income Tax Tribunal filed a writ petition and the High Court in order dated 22.12.2009 in T.C.(A) No.1420 of 2009 had set aside the matter back to the Commissioner of Income Tax (Appeals) and the same is now pending during the relevant point, despite the writ petition was filed. Under these circumstances, the first respondent initiated reassessment proceedings under Section 147 of the Act by issuing a notice under Section 148 of the Act.

7. The petitioner company filed a reply dated 01.04.2011, requesting the first respondent to treat the original return filed on 29.10.2004 as return in response to notice under

Section 148 and further requested for the reasons for reopening of assessment. The first respondent supplied the reasons for the reopening of assessment vide letter dated 19.04.2011, and the case was posted for further hearing. The petitioner questioned the jurisdiction of the first respondent for reopening of assessment.

8. The contentions of the petitioner regarding the jurisdiction is that the reassessment proceedings are invalid, since the reasons for reopening of assessment is communicated to the petitioner company beyond the six years period placing reliance upon the decision of the Hon'ble Delhi High Court in the case of M/s.Haryana Acrylic Manufacturing Co. vs CIT. There was no failure on the part of the petitioner-company to disclose fully and truly all material facts which were necessary for assessment. The final assessment order was passed and certain portions which were not acceptable to the petitioner were taken on file and thereafter to the Income Tax Appellate Tribunal.

9. In view of the fact that the assessment proceedings were completed in entirety and certain other aspects were also considered by the Appellate Authority, there is no other reason whatsoever for reopening of assessment. Thus, the impugned notice issued under Section 148 of the Act, is to be set aside.

10. The learned Senior Standing Counsel appearing on behalf of the respondents made a submission that the reopening of assessment proceedings were initiated well within a period of six years. The last date for reopening of assessment in the case of the petitioner was 30.03.2011 and the notice under Section 148, was issued on 07.03.2011. Thus, the notice impugned was issued within a period of six years and therefore, the petitioner has to participate in the process of reopening of assessment.

11. Considering the grounds raised by the petitioner, the impugned notice dated 07.03.2011, reveals that the respondent has reason to believe that the income chargeable for the tax for the assessment year 2004 – 05 has escaped assessment. The request of the petitioner assessee to furnish reasons was complied with in letter dated 19.04.2011 and the respondents have furnished the following reasons for reopening of assessment:

> “As requested, the reason for reopening the Assessment for Assessment year 2004-05 is as follows:-
>
> It was seen from the Profit & Loss Account that a sum of Rs. 127.34 Lacss had been debited as VRS payment under the head of “Salaries and Wages” and a sum of Rs. 56,90,305/- had been added back in the computation statement.

As per provisions of Section 35 DDA(1) of the I.T. Act, 1961, where an assessee incurs any expenditure in any previous year by way of payment of any sum to an employee in connection with VRS, in accordance with any scheme or schemes of voluntary retirement, 1/5th of the amount so paid shall be deducted in computing the profits and gains of the business for that previous year.

Applying this provisions of the I.T. Act, the allowable deduction U/s. 35DDA(1) would be 20% of Rs. 127.64 lacs i.e. 25.46 lacs and the balance amount of Rs. 101.88 lacs shall be disallowed for A.Y. 2004-05. However, a sum of Rs. 56.90 lacs has been added back, resulting in escarpment of income as follows:-

VRS amount as per P&L A/c	Rs. 127.64 lacs
Amount to be allowed for A.Y.2004-05	Rs. 25.46 lacs
Amout to be disallowed for A.Y.2004-05	Rs. 101.88 lacs
Less: Amount disallowed in total income statement	Rs. 56.90 lacs
Balance to be disallowed	Rs. 44.98 lacs

(ii) Income U/s. 27 for 80 HHC:

In the computation statement, transactions towards income for forex transaction, insurance claim and miscellaneous income aggregating to Rs. 406.12 lakhs were not brought to either in the scrutiny order U/s. 143(3), dt: 29-12-06 or in the Revision order U/s. 154, dated 01-02-07, so also interest income for Rs. 30.04 lacs which has to be brought to tax as per explanation (baa) to U/s 80 HHC, was not taken into calculation.

Omission to consider these income for calculation has resulted in incorrect determination of deduction U/s. 80 HHC and consequent short collection fo tax and surcharge along with interest U/s. 234-B to the tune of Rs. 24,55,728/-."

12. The petitioner sent a letter to the respondent stating that the reopening is done beyond the period of six years and therefore, the impugned notice under Section 148 is without jurisdiction. In this regard, the respondent in vide letter dated 14.11.2011 has stated that the reassessment proceedings were initiated for issuance of notice under Section 148 on 07.03.2011 and was served to the petitioner assessee on 16.03.2011. This was well before the expiry of time limit for making reopening of assessment under Section 148 of the Act.

Accordingly, they stated that the notice shall be deemed to be a valid notice.

13. Under these circumstances, the petitioner is bound to submit their objections, if they have chosen to do so. In the event of filing any such objections, same are to be considered by the respondents and the same is to be disposed of by passing a speaking order as per the directions of the Hon'ble Supreme Court in the case of GKN Driveshafts India Ltd., vs ITO reported in 2003 259 ITR 19 (SC). Even before submitting the objections on the reasons furnished for reopening of assessment, the petitioner filed the writ petition on the ground that reopening of assessment is made beyond the period of six years and therefore, the respondent has no jurisdiction. However, the respondents have categorically stated in their letter dated 14.11.2011 for the impugned notice under Section 148 was issued on 07.03.2011 and it was served to the assessee on 16.03.2011. The last date for reopening of assessment was 30.03.2011 and thereafter the impugned notice of reopening of assessment is well within the period of six years. In these circumstances, the petitioner has to avail the opportunities to be provided under the provisions of the Act and as per the directions of the Hon'ble Supreme Court in the case cited supra and submit their documents, evidences, statements etc., enabling the Assessing Officer to conclude the proceedings as expeditiously as possible.

14. Under these circumstances, the petitioner has not made out any acceptable ground for the purpose of intervening with the proceedings under Section 147 of the Act.

15. Accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

Pns

To

1.The Deputy Commissioner of Income Tax,
Company Circle - I(2),
Coimbatore.

2.The Assistant Commissioner of Income Tax,
Company Circle 1(2),
Coimbatore.

+1CC to Mr.A.P.Srinivas,Senior Standing Counsel,Sr.32554

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NSK 03/08/2021