IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :16.07.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.6004 of 2012
and
M.P.No.1 of 2012

M/s.Shree Ganesh Ventures,
Rep.by its Partner, Sri.Rahul Saraf
14-A, Ennore High Road,
Chennai – 600 019. ... Petitioner

Vs

Assistant Commissioner of Income Tax,
Business Circle XII,
Kanamai Building (7th Floor)
No.611, Anna Salai,
Chennai – 600 006. ... Respondent

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India to issue of Writ of Certiorari, calling for the records in PAN:AAOFS0487K dated 30.12.2011 on the file of the respondent relating to the Assessment Year 2007-08 and quash the same.

For Petitioner : Mr.M.V.Swaroop

For Respondent : M/s.Hema Muralikrishnan
Senior Standing counsel
For Income Tax

O R D E R

The Assessment order passed under Section 147 read with Section 143(3) of the Income Tax Act, 1961 dated 30.12.2011 is under challenge in this writ petition.

2. The learned counsel for the petitioner contended that the Directives of the Honourable Apex Court of India in the case of GKN Driveshafts (India) Ltd., Vs. Income Tax Officer and others reported in [(2003)259 ITR 19] had not been followed by the Assessing Officer by not furnishing the reasons for reopening of

assessment for the Assessment Year 2007-08. Thus, there is no blatant violation of the procedures as contemplated and thus, the assessment order is to be quashed.

3. Secondly, the learned counsel for the petitioner relied on the third proviso to Section 147 of the Income Tax Act, which states that the Assessing Officer may assess or reassess such income, other than the income involving matters which are the subject matters of any appeal, reference or revision, which is chargeable to tax and has escaped assessment. In the present case, the materials, books of accounts, informations were provided even before passing the original assessment order by the assessee. With reference to certain objections, the issues were taken by way of an appeal before the Commissioner (Appeals), who in turn granted certain benefits in favour of the assessee and in respect of the other issues, the petitioner has chosen to approach the Income Tax Appellate Tribunal, which was ended in favour of the assessee. Relying on these proceedings, the petitioner has stated that the reassessment order is void as the same was issued during the pendency of the proceedings before the First Appellate Authority and thus, the order impugned is in violation of the provisions of the Income Tax Act.

4. The learned Senior Standing counsel appearing on behalf of the respondent objected the said contentions by stating that as on the date, the notice under Section 148 of the Income Tax Act was issued, no proceedings were pending. Therefore, there was no impediment for the Assessing Officer to initiate reopening proceedings. However, subsequently, the proceedings ended and therefore, the petitioner is at liberty to approach the Appellate authority, challenging the assessment order, which is impugned in the present writ petition. It is further contended that the order sheet of the Assessing Officer would reveal that the reasons for reopening was furnished to the petitioner.

5. This Court is of the considered opinion that mere production of the order sheet would be insufficient to form an opinion, whether the reasons are furnished in a proper form to the assessee, enabling the assessee to submit its objections in the manner known to law. The Directives issued by the Apex Court is unambiguous with reference to the procedures to be followed. Thus, on reopening of assessment, if any request is made by the assessee, the Assessing Officer is bound to furnish the reasons by issuing a letter and on receipt of the reasons furnished, the assessee would be getting an opportunity to submit its objections in detail along with the documents and evidences, if any. Thereafter, the objections are to be disposed of. However,

there is no document to establish that the procedures contemplated are followed in the present case. Mere order sheet of the Assessing Officer cannot be relied upon for the purpose of forming an opinion that the procedures as contemplated were followed.

6. As far as the other submission made by the petitioner is concerned, now an assessment order has been passed without following the procedures as contemplated. Thus, the other grounds based on the orders passed by the First Appellate authority or by the Tribunal, the petitioner has to submit the same before the Assessing Officer for consideration, who in turn, has to consider the same, take a decision and pass appropriate orders.

7. In view of the facts and circumstances, this Court deem fit and proper to remand the matter back for fresh consideration, enabling the authorities to follow the procedures and to provide a fair opportunity to the petitioner to put forth their case in the manner known to law. Accordingly, the impugned order passed by the respondent in proceedings in PAN:AAOFS0487K dated 30.12.2011 is quashed and the matter is remanded back to the respondent for fresh consideration. The respondents are directed to follow the Directives issued by the Hon'ble Supreme Court of India in the case of GKN Driveshafts (cited supra) and by furnishing reasons for reopening of assessment to the assessee and thereafter, continue the procedures as contemplated, complete the said exercise as expeditiously as possible. The petitioner is also directed to co-operate for the early disposal of the proceedings by availing the opportunities to be provided.

8. With these directions, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Kak
To

Assistant Commissioner of Income Tax,
Business Circle XII,
Kanamai Building (7th Floor)
No.611, Anna Salai,
Chennai – 600 006.

+1cc to Mr.M.V.Swaroop, Advocate Sr.34206
+1cc to Mrs.Hema Murali Krishnan, Advocate Sr.34131

W.P.No.6004 of 2012

smi[co]
srg 09/08/2021