IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.3477 of 2013
and M.P.No.1of 2013

M/s.Vedanta Limited, SIPCOT Industrial Complex,
Madurai Bye Pass Road, T.V.Puram,
Tuticorin 628 002
(Cause Title amended vide order dated
07.07.2020 made in WMP.No.23825/2018
in W.P.No.3477/2013). .. Petitioner

vs.

The Assistant Commissioner of Income Tax,
Circle I (1),
No.3, Gandhi Road,
Salem 636 007. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records in PAN: AAACT7665D dated 22.01.2013 on the file of the respondent relating to Assessment Year 2005-06, quash the same.

For Petitioner : Mr.G.Baskar

For Respondent : Mr.A.P.Srinivas
Senior Standing Counsel.

O R D E R

The petitioner has challenged the impugned notice communication dated 22.01.2003 over ruling the objection of the petitioner for re-opening the assessment year 2005-06 which was originally completed on 07.12.2007 vide the assessment order under Section 143(3) of the Income Tax Act, 1961.

2. It is noticed that the impugned order has been passed purportedly in compliance of the decision of the Hon’ble Supreme Court in GKN Driveshafts (India) Ltd., vs. Income Tax Officer(2003) 259 ITR 19 (SC). The impugned notice under Section 148 of the Income Tax Act, 1961 issued on 29.03.2012

seeks to reopen the assessment for the assessment year 2005-06, the ostensible reasons given to the petitioner for reopening the assessment vide communication dated 21.08.2011 reads as under:

> " It is notice from the Notices on Accounts - Item No.9 that the General reserve of Rs.240.65 million includes the adjustment consequent to the restriction of depreciation to 95% of the cost of assets pertaining to earlier years. Any excess amount received on account o change in depreciation rate is to be routed through P&L A/c.and assessee has to offer the excess amount received on account of restriction of depreciation to 95% of the cost of asset pertaining to earlier years directly to the general reserve and required to be addd to Book profit to the extent of Rs.9,98,84,999/- being the excess depreciation of earlier years.
>
> In view of the above, I have reason to believe that the income chargeable to tax has escaped assessment within the meaning of Section 147 of the Income Tax Act, 1961."

3. The petitioner has replied to the same. After reproducing the reply of the petitioner, the impugned order dated 22.01.2013 has been which reads as under:

> " The objections filed by the assessee is carefully considered.
>
> The re-opening of the assessment has merit and it is supported by law as well as facts.
>
> Section 147 specifies certain conditions for re-opening the assessment. It does not specify a condition that reasons for re-opening cannot be deducted from the record submitted by the assessee earlier assessment under Section 143(3). It also not specifying that "any material/formation which has come subsequent to the notice" for re-opening the assessment. So, your contention is not supported by law.
>
> The reasons submitted to you for re-opening is clearly specify the fact for re-opening the assessment. However, you had objected the re-opening without any supportive facts. If you are disputing the facts of the issue, then it should be supported by facts.

> The reasons provided to you explicitly shows the failure on your part to disclose fully and truly all material facts necessary for assessment in that assessment year.
>
> Thus, re-opening proceedings initiated is valid, both in law and facts. The principles laid down by the Hon'ble Supreme Court in the case of GKN Drive Shafts (India) Ltd (259 ITR 19) has been duly followed in this case.
>
> In view of the above reasons, I am rejecting your objections for re-opening the assessment.
>
> Case is posted for hearing on 01.02.2013."

4. The case of the petitioner is that the assessment has been re-opened beyond the period of four years from the end of the relevant Assessment year 2005-2006. The respondent has proceeded on the wrong assumption of facts that there was change regarding the rate of depreciation and therefore the amount which has been transferred to the revaluation reserve was to be added to the book profit and therefore the tax was payable by the petitioner escaped assessment and therefore the department is in justifying for the purpose of reopening the assessment under proviso to Section 147 of the Income Tax Act, 1961.

5. From a reading of the so-called reasoning given for reopening the assessment, it is evident that there is no discussion as to how and what basis the reopening of the assessment can be sustained. The order passed by the respondent cannot be called as a speaking order as per the decision of the Supreme court in the case of GKN Driveshafts (India) Ltd., vs. Income Tax Officer (2003) 259 ITR 19 (SC).

6. In the light of the above discussion, the impugned order is quashed. The respondent is directed to pass a speaking order on merits in accordance with law, within a period of 30 days from the date of receipt of a copy of this order. Such order shall be passed in accordance with procedure that were going at the time when notice was issued.

7. Accordingly, this writ petition stands disposed with the above observation. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

kkd
To

The Assistant Commissioner of Income Tax,
Circle I (1),
No.3, Gandhi Road,
Salem 636 007.

+1cc to Mr.A.P.Srinivas , Advocate SR.No. 21209
+1cc to Mr.G.Baskar , Advocate SR.No. 21509

W.P.No.3477 of 2013
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UM(CO)
A.SK(13.07.2021)