IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :29.07.2021

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.9151 of 2013
and
M.P.No.1 of 2013
and
M.P.No.1 of 2014

Shri.Jacob Kurien ...Petitioner

Vs

Assistant Commissioner of Income-tax,
Business Circle XV,
New Block, 6th Floor,
121, Nungambakkam High Road,
Chennai – 600 034. ... Respondent

Prayer : Writ Petition filed Under Article 226 of the Constitution of India to issue of Writ of Certiorari, calling for the records in GIR.No.PAN AFBPK7766B dated 09.03.2013 relating to the Assessment Year 2005-06, quash the same.

For Petitioner : Mr.V.Vikram
For M/s.Subbaraya Aiyar Padmanabhan

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

ORDER

The Assessment order dated 09.03.2013 passed for the Assessment Year 2005-06 is under challenge in the present writ petition.

2. The petitioner is an Advocate by profession and maintains accounts and financial statements as required in terms of the provisions of the Income Tax Act. In respect of the Assessment Year 2005-06, a return of income was filed on 29.07.2005 and the said return of income was processed under Section 143(1) of the Income Tax Act on 03.07.2006. Thereafter, it was taken up for scrutiny by issuing a notice under Section 143(2) of the Act on 22.07.2006. The petitioner had, in the Return of Income,

admitted Long Term Capital gains on sale of undivided share of land at Door No.18, Harrington Road, Chennai – 600 031. The respondent raised various queries and clarafications and the petitioner also submitted his documents, Books of Accounts etc.,

3. The grievances of the writ petitioner is that the Assessment order originally issued was re-opened by invoking Section 147 of the Income Tax Act. Notice under Section 148 was issued and the petitioner requested for reasons. The respondents furnished the reasons for re-opening of assessment in proceedings dated 27.04.2012 and the petitioner filed objections to the reasons in vide letter dated 10.09.2012. Without disposing of the objections, the respondent passed the impugned order of assessment. Thus, the Directives of the Hon'ble Supreme Court of India in the case of GKN Driveshafts (India) Ltd., Vs. Income Tax Officer and others reported in [(2003)259 ITR 19] has not been followed in the present case.

4. The learned Senior Standing counsel appearing on behalf of the respondent though disputed the contentions raised by the petitioner, is unable to establish that the objections filed by the petitioner on 10.09.2012 was considered and disposed of by the respondent before passing the impugned assessment order on 09.03.2013. This being the factum, the writ petition is to be considered.

5. Accordingly, the impugned order passed by the respondent in proceedings in GIR.No.PAN AFBPK7766B dated 09.03.2013 relating to the Assessment Year 2005-06 is quashed and the matter is remanded back to the respondent for fresh consideration. The petitioner is permitted to submit further objections, if any, within a period of two weeks from the date of receipt of a copy of this order. On receipt of the said objections, if any, along with the objections dated 10.09.2012, the respondent shall consider the same on merits and dispose of the said objections and thereafter, proceed with the process of assessment in accordance with law. The respondent is directed to follow the Directives of the Hon'ble Supreme Court of India in the case of GKN Driveshafts (India) Ltd.,(cited supra).

6. With these directions, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

Assistant Commissioner of Income-tax,
Business Circle XV,
New Block, 6th Floor,
121, Nungambakkam High Road,
Chennai - 600 034.

+1cc to M/s.Subbaraya Aiyar Padmanabhan, Advocate, S.R.No.36823

+1cc to M/s.Hema Muralikrishnan, Advocate, S.R.No.36529

W.P.No.9151 of 2013

NMI(CO)
CT/18/08/2021