IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.07.2021

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.Nos.4481 & 4482 of 2015
and
M.P.Nos.1 and 1 of 2015

M/s.Sundaram Asset Management Co. Ltd.,
(Formerly known as Sundaram BNP Paribas Asset Management Company Ltd)
Rep. By its Chief Financial Officer,
Sundaram Towers, II Floor, No.46,
Whites Road,
Chennai 600 014. ..Petitioner in both W.Ps.

Vs.

1.The Assistant Commissioner of Income Tax,
Large Taxpayer Unit - I,
1775, Jawaharlal Nehru Inner Ring Road,
Anna Nagar Western Extension,
Chennai 600 101.

2.Deputy Commissioner of Income Tax,
Large Taxpayer Unit - I,
1775, Jawaharlal Nehru Inner Ring Road,
Anna Nagar Western Extension,
Chennai 600 101.

3.Commissioner of Income Tax,
Large Taxpayer Unit - I,
1775, Jawaharlal Nehru Inner Ring Road,
Anna Nagar Western Extension,
Chennai 600 101.

4.Union of India,
Rep. By its Secretary,
Ministry of Finance,
Department of Revenue,
New Delhi. ..Respondents in both W.Ps.

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India, to issue Writ of Certiorari, calling for the records relating to the impugned orders passed by the 1st respondent dated 27.01.2015 for the Assessment Years 2009-10 and 2010-11 respectively and quash the same.

(In both W.Ps.)

For Petitioner : Mr.Raghavan Ramabadran
Assisted by Ms.G.Janane

For Respondents : Mr.D.Prabhumukunth Arunkumar
(Standing Counsel for IT)

COMMON ORDER

The reopening of assessment, initiated under Section 147/148 of the Income Tax Act, 1961 (hereinafter referred to as, 'the Act'), is questioned in the present Writ Petitions.

2.In order to establish the ground of lack of jurisdiction, the learned counsel for the petitioner made a submission that the reason for reopening of assessment is culled out from the assessment order passed for the Assessment Year 2008-09. Admittedly, the reopening of assessment has been initiated for the Assessment Years 2009-10 and 2010-11. The reliance placed for reopening is the assessment order passed by the Assessing Authority, for the Assessment Year 2008-09. This being the factum, the learned counsel for the petitioner reiterated that the notices issued under Section 142 (1) of the Act, in connection with the Assessment Years 2009-10 and 2010-11, were responded and the petitioner submitted all the informations and relevant records. However, the assessment orders were passed without reference to those materials furnished by the assessee in response to the notices issued under Section 142 (1) of the Act. It is further contended that with reference to the Assessment Year 2007-08 also, the very same reason has been relied upon for reopening of the assessment and the reopened assessment was proceeded with and the petitioner submitted their detailed objections and accepting the said objections, the Assessing Authority passed an order on 28.03.2013, dropping the reopening proceedings with reference to the Assessment Year 2007-08. When the detailed objections submitted by the petitioner was accepted and the reopening proceedings were dropped for the Assessment Year 2007-08, the very same materials are relied upon for the purpose of reopening of assessment, as far as the impugned proceedings are concerned. It is urged that the materials are one and the same and the earlier order dropping the reopening proceedings is not considered by the Assessing Officer while disposing of the objections filed by the writ petitioner.

3.The learned Standing Counsel appearing on behalf of the respondents brought to the notice of this Court that all these documents and objections and dropping of the reopening proceedings with reference to the Assessment Year 2007-08 were not produced before the Assessing Officer in the objections submitted by the writ petitioner on 23.07.2014. Therefore, based on the new materials, the petitioner cannot seek exoneration in writ proceedings under Article 226 of the Constitution of India. The respondents have no opportunity to deal with the documents or the points now raised by the petitioner in the present Writ Petitions. Thus, the Writ Petitions are to be rejected.

4.This Court is of the considered opinion that the Assessing Authority cannot be expected to deal with the grounds which all are not raised in the objections by the assessee. Undoubtedly, the petitioner has now produced numerous materials to establish that the materials already considered and the proceedings dropped by the Assessing Authority were not taken into consideration while passing the impugned order. One cannot expect the Assessing Authority to dispose of the objections, wherein the assessee has not mentioned about these facts and therefore, this Court is of the considered opinion that the revenue required an opportunity to deal with these documents and take a decision with reference to the ground raised by the petitioner.

5.In view of the fact that the petitioner assessee could able to establish that the materials which all are now relied upon were the materials already adjudicated and proceedings were dropped, this Court thought fit to provide an opportunity to the petitioner to place all these materials and informations to the Assessing Officer, by way of an additional objections and the said additional objections are to be considered by the Assessing Officer with reference to the documents and evidences and pass an additional order, disposing of the additional objections to be filed by the writ petitioner and thereafter, the Assessing Authority shall proceed further. The opportunity is granted in view of the fact that the materials produced by the petitioner seems to be impressive. Thus, this Court is further conscious about the fact that the opportunity, as contemplated pursuant to the directions of the Hon'ble Apex Court of India in GKN Drive shafts India Ltd., Vs. ITO reported in 259 ITR 19 (SC), has already been given. However, in the present case, there was an omission on the part of the assessee to include certain vital materials in the objections and in the interest of justice, such an additional opportunity is given to the petitioner to submit additional objections and further, considering the peculiar facts and circumstances. Thus, this additional opportunity cannot be cited as a precedent in all other cases which would create nor such an additional opportunity would create any right to claim further opportunity by any other assessee or petitioner.

6.In view of the facts and circumstances, the petitioner is at liberty to submit their additional objections, as well as documents, materials, statements, etc., within a period of two weeks from the date of receipt of a copy of this order and on receipt of any such additional objections, the respondents/Assessing Authority are directed to consider the same on merits and by affording opportunity, including personal hearing, if any sought for, to the writ petitioner and dispose of the same by passing additional order of disposing additional objections within a period of eight weeks from the date of receipt of additional objections received from the petitioner.

With these directions, these Writ Petitions stand disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

Gsa

TO

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4.The Secretary, Union of India,
Ministry of Finance,
Department of Revenue,
New Delhi.

+1cc to Mr.Hema Muralikrishnan, Advocate, S.R.No. 33882
+2cc to Mr.Lakshmikumaran, Advocate, S.R.No. 33849

W.P.Nos.4481 & 4482 of 2015

PMK(CO)
GN(05/08/2021)