IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :29.06.2021

CORAM

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

W.P.Nos.201, 202 & 203 of 2013

Sridhar Nagarajan ...Petitioner in all WPs.

Vs

1.The Commissioner of Income Tax,
Aayakhar Bhavan,
No.121, Nungambakkam High Road,
Chennai - 600 034.

2.The Assistant Commissioner of Income Tax,
Business Circle - XV,
No.121, Nungambakkam High Road,
Chennai - 600 034. ... Respondents in all WPs.

PRAYER in W.P.Nos.201 & 202 of 2013 : Wirt Petition filed Under Article 226 of the Constitution of India to issue of Writ of Certiorari, calling for the records from the office of the 2nd respondent ending with the notices dated 07.05.2012 & 20.11.2012 respectively and quash the same.

PRAYER in W.P.No.203 of 2013 : Writ Petition filed Under Article 226 of the Constitution of India to issue of Writ of Mandamus, directing the respondents to grant refund of Rs.23,05,599/- as per the assessment order dated 31.12.2010 with interest as applicable.

For Petitioner : M/s.C.Mani Shankhar,
Senior Counsel
for Mr.S.Arun Prasad

For Respondents : Mrs.Hema Muralikrishnan
Senior Standing Counsel
for Income Tax
..in all three WPs.

COMMON ORDER

The notices dated 07.05.2012, 20.11.2012 and the Assessment Order dated 31.12.2010 are under challenge in these writ petitions.

2. The petitioner is in the business of buying and selling of lands for large corporates. The learned Senior Counsel appearing on behalf of the writ petitioner made a submission that the final order of assessment was passed considering the return of income as well as the materials produced by the writ petitioner on 31.12.2010 and therefore, there is no reason for reopening of assessment in the said Assessment year by invoking the provisions under Section 147 of the Income Tax Act.

3. The learned counsel for the respondents disputed the said contentions by stating that the Assessing Officer has reason to believe for reopening of assessment in respect of the income chargeable to tax and accordingly, issued notice as mandated under Section 148 of the Income Tax Act. The petitioner has to submit the application by seeking the reasons for reopening of assessment and the Competent Authority has to furnish the reasons for reopening of assessment and thereafter, the petitioner has to submit his objections on the reasons and the said objections are to be disposed of by the Competent Authority. These procedures are contemplated by the Hon'ble Supreme Court of India in the case of GKN Driveshafts India Ltd., vs. ITO reported in 2003 259 ITR 19 (SC), and the Authorities are also bound to follow the procedures scrupulously. Even before seeking reasons for reopening of assessment, the petitioner rushed to the Court and filed the present writ petition. Thus, the writ petition is pre-matured and the petitioner has to make a request for furnishing the reasons for reopening of assessment and thereafter submit his objections, if any.

4. In view of the fact that the procedures contemplated by the Hon'ble Apex Court of India, has not been adhered to in the present case, the petitioner is at liberty to submit an application before the Assessing Officer, seeking reasons for reopening of assessment, who in turn has to furnish the same and follow the procedures as contemplated.

5. With this liberty, these writ petitions stand disposed of. No costs.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

Pns

To

1.The Commissioner of Income Tax,
Aayakhar Bhavan,
No.121, Nungambakkam High Road,
Chennai - 600 034.

2.The Assistant Commissioner of Income Tax,
Business Circle - XV,
No.121, Nungambakkam High Road,
Chennai - 600 034.

+3ccs to Mr.K.Krishna Murthy, Advocate SR.No.30016

+1cc to Mrs.Hema Muralikrishnan, Advocate SR.No.30047

W.P.Nos.201, 202 & 203 of 2013

PCH(CO)
GMY(20/07/2021)