IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.08.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. No. 3847 of 2014

M/s.Vestas Wind Technology India Private Limited,
A Private Limited Company
Incorporated under the provisions of the
Indian Companies Act, 1956,
Represented by its Director - Finance,
Mr.Govindaraj Kolappan,
S/o Mr.Kolappanpalaniandi Pillai,
No.298, Old Mahabalipuram Road,
Sholinganallur, Chennai - 600 119. ...Petitioner

-vs-

The Assistant Commissioner of Income Tax
Company Circle III (4),
121, Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034. ...Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari, calling for the records on the file of the respondent and quash the impugned proceedings in PAN No.AAACA9274F/Comp.CirIII(4)/2013-14 dated 27.11.2013 along with notice issued by the respondent under Section 148 of the Act dated 25.03.2013.

For Petitioner : Mr.R.Sivaraman
For Respondent : Ms.Hema Murali Krishnan
Senior Standing Counsel for IT

O R D E R

The Writ on hand is filed questioning the validity of the order of disposal of the objections filed by the writ petitioner in proceedings dated 27.11.2013 as well as notice issued under Section 148 of the Income Tax Act, 1961 on 25.03.2013.

2. The petitioner is a Private Limited Company engaged in the business of manufacture and service of wind technology. It is assessed to income tax on the file of the respondent. The

petitioner Company filed its original return of income for the assessment year 2007-08 on 29.10.2007 declaring a total income of Rs.227,96,81,689/-. The revised return of income was filed admitting a total income of Rs.223,75,49,786/. The return was duly processed under Section 143(1) of the Act on 17.03.2009. The case was selected for scrutiny and notice dated 24.09.2010 under Section 143(2) of the Act was issued calling for the details.

3. The petitioner Company submitted all relevant book of accounts as well as informations as sought for by the Assessing Authority. The Assessing Officer scrutinized the materials and passed the assessment order under Section 143(3) of the Act on 29.12.2010. While so, the impugned notice under Section 148 of the Act was issued by the respondent on 25.03.2013. The petitioner Company submitted its reply seeking reasons for reopening. The respondent furnished the reasons for reopening of the assessment. Thereafter, the petitioner Company filed its objections in detail. The objections filed by the writ petitioner are rejected vide order dated 27.11.2013 and challenging the said order, the present Writ Petition has been filed.

4. The learned counsel appearing on behalf of the writ petitioner drawn the attention of this Court with reference to the auditors' report and pointed out that, the CIF value of imports, expenditure and earnings in foreign currency. The license fee amount has been clearly mentioned in the auditors' report. The name of the Company is also mentioned. It is contended that, the details furnished in the reasons for reopening is not a new material and all those particulars are very much available in the auditors' report and the said issues were adjudicated by the Assessing Authority. At the outset, it is contended that the materials relied on for the purpose of reopening of assessment is the same material which were already furnished by the assessee at the time of passing original assessment order. Thus, the initiation of reopening proceedings is change of opinion.

5. The learned counsel for the petitioner contended that the reasons would indicate that, the commission paid by M/s.Vestas Wind Technology India Private Limited to M/s.Tuticorin Trexim Private Limited needs examination in the light of facts gatheres. However, the very same particulars and facts are submitted before the Assessing Authority at the time of adjudication of original assessment. The details of sale commission from 01.04.2006 to 31.03.2007 were furnished before

the Assessing Officer where in the name of M/s.Tuticorin Trexim Private Limited is found. Thus, the reasons for reopening are untenable. Further reasons furnished in proceedings dated 18.09.2013 is also the same material which were already considered by the original Assessing Authority. The petitioner states that all these grounds raised in their objections dated 15.10.2013 and the Assessing Officer has not adjudicated any one of the grounds in clear manner and disposed of the objections which would establish that the respondent has not applied their mind.

6. The learned Senior Standing counsel appearing on behalf of the respondent disputed the said contention raised on behalf of the petitioner by stating that the impugned order would reveal that the petitioner raised an objection on the ground that the materials which were considered at the time of original assessment is relied upon for the purpose of reopening of assessment to deal with the said objection. The respondent has clearly mentioned the provision, i.e., Explanation 1 of Section 147 of the Income Tax Act. The Explanation 1 is self explanatory wherein mere production of account books before the Assessing Officer or other evidences cannot be a ground to drop the reopening of assessment. Even from and out of the very same book of accounts and evidences produced and if the parties find any new information or otherwise, they are empowered to reopen the assessment by invoking the power confirmed under Section 147 of the Act.

7. This Court of the considered opinion on the Explanation 1 of Section 147 of the Act enumerates as follows:

> "Explanation 1 - Production before the Assessing Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of the foregoing proviso."

8. Explanation 2 sub-clause (c) enumerates that, where an assessment has been made, but income chargeable to tax has been under assessed or such income has been assessed at too low a rate or such income has been made the subject of excessive relief under this Act or excessive loss or depreciation allowance or any other allowance under this Act has been computed. Thus, the cogent reading of Explanation 1 and 2 under Section 147 of the Act would reveal that the authority competent is empower to reopen the assessment even in cases where the books of accounts or other evidences produced by the assessee on

receipt of the information or otherwise, the authority if found some materials produced by the assessee are not adjudicated or not properly considered with reference to the provisions of the Income Tax Act by the Assessing Authority, then also they are empowered to invoke the power under Section 147 of the Act. This being the wider scope of reopening the proceedings under Section 147 of the Act. Therefore, the contention raised by the petitioner that he has already produced all the documents and those documents also mentioned in the auditors' report as well as in the return of income cannot be taken into consideration for the purpose of setting aside the reopening proceedings.

9. If at all the petitioner is of the opinion that he has got any further materials to establish, it is for them to participate in the reopening proceedings and put forth the case by filing the particulars to be provided before the Competent Authority. However, the petitioner has not made out any acceptable ground for the purpose of interfering with the reopening proceedings already initiated against the Writ Petitioner and therefore, the petitioner has to co-operate for the earlier disposal of the reopening proceedings by availing the opportunities to be provided by the authority.

10. With these directions, this Writ Petition is dismissed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

vji
To
The Assistant Commissioner of Income Tax
Company Circle III (4),
121, Mahatma Gandhi Road,
Nungambakkam,
Chennai - 600 034.

+1 CC to M/s.Hema Muralikrishnan, Advocate, Sr.No. 38686.

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PL(CO)
LS(06/09/2021)