IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.08.2021

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P. No.14032 of 2021
and
WMP. Nos.14911 & 14913 of 2021

Palani Jothi Mani ... Petitioner

Vs.

Deputy Commissioner of Income Tax,
Non-Corporate Circle 8 (1), CHE,
Room No.507, Annexe Building,
V Floor, Nungambakkam, Chennai – 600 034. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari, calling to quash the Notice U/s.148 of the Income Tax Act, 1961 with No.ITBA/AST/S/148/2020-21/1031884233 (1) dated 29.03.2021 issued by the respondent.

For Petitioner : Mr.B.Ramanakumar

For Respondents : Mrs.Hema Muralikrishnan, Senior Standing Counsel

O R D E R

Heard Mr.B.Ramanakumar, learned counsel for the petitioner and Mrs.Hema Muralikrishnan, learned Senior Standing Counsel for the respondent.

2. The petitioner has challenged proceedings under Section 148 of the Income Tax Act, 1961 (in short 'Act') for reopening of assessment for assessment year (AY) 2017-18.

3. The learned counsel for the respondent has filed counter to the effect that the writ petition is premature insofar as the Department is yet to pass a speaking order on the objections filed by the petitioner to the assumption of jurisdiction. Upon a perusal of the writ affidavit, I find that the petitioner not made a disclosure in regard to the filing of objections on 23.06.2021. This ought to have been done, since the writ

petition has been filed only on 05.07.2021 after the objections were filed.

4. Be that as it may, in light of the fact that the petitioner has filed objections before the respondent on the aspect of assumption of jurisdiction, this writ petition is indeed premature.

5. The procedure for re-assessment has been set out by the Supreme Court in GKN Driveshafts (India) Limited Vs. Income Tax Officer (259 ITR 19) in the following terms:

> 'We see no justifiable reason to interfere with the order under challenge. However, we clarify that when a notice under Section 148 of the Income tax Act is issued, the proper course of action for the noticee is to file return and if he so desires, to seek reasons for issuing notices. The assessing officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the noticee is entitled to file objections to issuance of notice and the assessing officer is bound to dispose of the same by passing a speaking order. In the instant case, as the reasons have been disclosed in these proceedings, the assessing officer has to dispose of the objections, if filed, by passing a speaking Order before proceeding with the assessment in respect of the abovesaid five assessment years.'

Thus upon the filing of objections, the Department is expected to pass a speaking order on the objections filed. In the present case, the petitioner has filed objections dated 23.06.2021 and has rushed to this Court without awaiting the passing of a speaking order.

6. The respondent will pass an order on the objections filed by the petitioner within a period of four (4) weeks from today and further proceedings, if any, shall be subject to the same.

7. This writ petition is dismissed. Connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

rkp

To

The Deputy Commissioner of Income Tax,
Non-Corporate Circle 8 (1), CHE,
Room No.507, Annexe Building,
V Floor, Nungambakkam, Chennai - 600 034.

+1cc to Mrs.Hema Muralikrishnan, Advocate, S.R.No.39163

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GPL(CO)
RLP(19/08/2021)