IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.08.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. NO. 35103 OF 2016
AND
W.M.P. NO. 30256 OF 2016

M/s.Venture Lighting India Limited,
Plot No.A30, D-5, Phase II, Zone B,
Madras Export Processing Zone,
Tambaram,
Chennai - 600 045.

... Petitioner

-vs-

1. The Principal Commissioner of Income Tax,
Chennai -3,
Fourth Floor, Main Building,
Income Tax Department,
121, Nungambakkam High Road,
Chennai - 600 034.

2. The Additional Commissioner of Income Tax,
Corporate Ward - 3,
Fourth Floor, Wanaparthy Block,
Income Tax Department,
121, Nungambakkam High Road,
Chennai - 600 034.

3. The Assistant Commissioner of Income Tax
Corporate Circle 3(2),
Wanaparthy Block, Room No.414, 4th Floor,
Income Tax Department,
121, Nungambakkam High Road,
Chennai - 600 034.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus calling for the records of the third respondent to quash the interim order dated 12.09.2016 in No.AAACA9284H/827-V/2009-10 and consequently quash the impugned notice dated 25.01.2016 in PAN No.AAACA9284H issued in terms of Section 148 of the Income Tax Act, 1961 on the assumption of jurisdiction under Section 147 of the said Income Tax Act, 1961 for framing re-assessment in relation to the assessment year 2009-10 and further direct the third respondent to drop the proceedings initiated under 147 of the Act for the said assessment year 2009-10.

For Petitioner : Mr.S.Sridhar

For Respondents : Ms.Hema Murali Krishnan
Senior Standing Counsel for IT

O R D E R

The writ on hand is filed challenging the order passed by the respondents disposing of the objections raised by the writ petitioner for reopening of the assessment under Section 147 of the Income Tax Act, 1961 and the notice issued under Section 148 of the Income Tax Act.

2. The petitioner is a Company filed their return of income on 26.09.2009 for the assessment year 2009-10. The petitioner enclosed the statement of total income before the third respondent along with the audited financial for the previous year relating to the assessment year under consideration, tax audit report and all other relevant reports which are all necessary. Notice under Section 143 (2) of the Act was issued on 23.08.2010 and the materials submitted by the petitioner were considered by the Assessing Officer and after completing the scrutiny assessment, final order of assessment was passed by the Assessing Officer on 27.02.2013.

3. Notice under Section 148 of the Income Tax Act was issued for reopening of assessment for the assessment year 2009-10 on 25.01.2016. The petitioner vide letter dated 29.01.2016

requested for furnishing the reasons for reopening of the assessment. The respondents furnished the reasons in proceedings dated 29.04.2016 and the petitioner filed its objection in detail on 03.06.2016. The objections filed by the petitioner were rejected by the respondents in the impugned proceedings dated 12.09.2016.

4. The learned counsel appearing for the petitioner mainly contended that, absolutely there is no fresh materials available on record for the purpose of reopening of assessment. Secondly, he has contended that, the final assessment order under Section 143(3) of the Act was passed after considering the books of accounts and evidences produced by the writ petitioner and the very same materials were relied upon for the purpose of reopening of the assessment and therefore, the very initiation of proceedings under Section 147 of the Act is in violation of the conditions stipulated in the provisions as the reopening is made beyond the period of four years but within the period of six years.

5. The learned counsel for the petitioner thirdly raised the point that computation of income relied on by the Assessing Officer for reopening of assignment is nothing but change of opinion. Thus, the conditions stipulated under the proviso clause (2) to Section 147 of the Income Tax Act has not been complied with. Absolutely, there is no material on record to establish that the petitioner has not disclosed the facts truly and fully. Thus, the impugned initiation of reopening proceedings itself is untenable. The petitioner has elaborately filed their objections and the relevant details and also furnished the documents during the original adjudication before the Assessing Officer. Even the clarifications sought for by the Assessing Officer were fully furnished by the petitioner. Accordingly, the Assessment Order was passed. Thus, from the impugned initiation of reopening of assessment it is apparent that the Assessing Officer has not applied his mind with reference to the materials, books of accounts, informations already furnished by the assessee at the time of passing original assessment order.

6. The attention of this Court is drawn by the learned counsel for the petitioner that from the particulars furnished in the return of income, the petitioner has clearly mentioned

about the income credits shown in the profit and loss account were exempted. The assessee has stated that any other exempt income is Rs.28,96,53,662/-. Perusal of the reasons furnished by the respondents would show that the very same amount as well as the details furnished by the assessee are taken into consideration for the purpose of reopening of assessment. Thus, reopening of assessment beyond the period of four years without complying with the mandatory conditions as stipulated under the proviso clause (2) Section 147 regarding the non-disclosure of true and full facts is not established by the Revenue and therefore, the Writ Petition is to be considered.

7. The learned Senior Standing counsel appearing for the respondents objected the contentions raised on behalf of the petitioner while stating that under Explanation 1 and 2 to Section 147, numerous circumstances are provided for the purpose of reopening of the assessment. Even in the impugned order for disposing of the objections, it has clearly stated that Explanation 1 and 2 to Section 147 provides power to the authority to reopen the assessment even in the cases where the assessee produced the accounts books and other evidences at the time of original assessment. Thus, the contentions raised in this regard by the petitioner are untenable. The books of accounts and materials produced mainly as a source for the purpose of culling out new truth or in case of any under assessment or the other circumstances contemplated under Explanation 2 sub-clause (c) are traced out. Then also, the Assessing Officer is empowered to reopen the assessment under Section 147 of the Income Tax Act. Thus, it is for the assessee to explain and place all the materials before the authority at the time of reassessment proceedings and in the present Writ Petition, such an elaborate adjudication need not be undertaken with reference to the disputed facts.

8. Considering the arguments of the learned respective counsel appearing on behalf of the petitioner and the learned Senior Standing Counsel appearing on behalf of the respondents, Explanation 1 and 2 to Section 147 stipulates that, Explanation 2 sub-clause (c) contemplates where an assessment has been made but income chargeable to tax has been underasessed or such income has been assessed at too low 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, mere production of books of accounts by the assessee would be insufficient to claim that on the basis of such books of accounts or materials, no reassessment proceedings shall be initiated. The very purpose and object of the provision for reopening of assessment is to ensure that income chargeable to tax, escaped assessment, is brought under the network by way of initiation of reassessment proceedings.

9. The contention of the learned counsel for the petitioner that they have furnished the materials regarding the exempted income in their return may be a source for culling out further truth regarding the details. Even in such cases, if any under-assessment is noticed or further informations are received or materials are available, it is for the authority competent to reopen the assessment by considering various aspects. However, in such circumstances, if the authority has reason to believe that the income chargeable to tax escaped assessment, which would be sufficient for reopening of assessment. Mere reopening of assessment would not cause prejudice to the interest of the assessee, as the original assessment order was passed merely based on the return of income as well as the books of accounts and the evidences produced by the assessee. Reopening of assessment is the opportunity for the revenue to cull out certain truth which were not disclosed at the time of passing the original assessment order.

10. Once income chargeable to tax escaped assessment is identified, and the Assessing Officer has 'reason to believe' for reopening of assessment, then the intricacies involved in the accounting system and the manner, in which, the disclosures are made by the assessee in their original return of income are to be dealt with elaborately with reference to the documents and evidences. Undoubtedly, on reopening of assessment, assessee would get an opportunity to put forth their defense in the manner prescribed. It is needless to state that the materials produced by the assessee along with the return of income may also be a source for reopening of assessment with reference to Explanation 1 to Section 147 of the Act. Thus, exemptions claimed and the reasons for exemption, eligibility for exemption and the statement furnished and its correctness are to be

adjudicated by the competent authority and such an exercise cannot be undertaken by the High Court in a writ proceedings under Article 226 of the Constitution of India. Therefore, mere reopening of assessment would not cause any prejudice to the interest of the assessee as the assessee would be getting an opportunity to defend their case in the manner known to law. The assessee may raise a point that they are unnecessarily called for to re-adjudicate the issues already adjudicated. In this regard, the provision states that if the Assessing Officer has 'reason to believe' and such 'reason to believe' is established within the scope of Section 147 of the Act, then the assessee is bound to participate in the process of reassessment. Therefore, the Courts are expected to be cautious, while setting aside the reopening proceedings as it is the opportunity provided to the Revenue to cull out certain truth after passing the assessment order and consider the materials and pass an order of reassessment. Under these circumstances, once, the Assessing Officer has 'reason to believe' for reopening of assessment, based on the materials available, then further adjudication on merits are to be done by the competent authority and the assessee has to avail the opportunity and defend their case. Contrarily, High Court cannot venture into an adjudication of disputed facts, which may lead to incorrectness on facts. The disputed facts cannot be adjudicated merely based on the affidavits filed by the parties in the writ petition.

11. In the present case, the reasons furnished are as under:

"It is seen from the Profit and Loss Account of the assessee that assessee earned book profit before taxes of Rs.48,50,31,179/-. However, it had offered taxable income of Rs.19,46,01,782/- which is very less as compared to the book profit shown in the P&L Account. On further verification of e-filed return (Schedule-BP) it is found that this difference between Book Profits and taxable income arose mainly for the reason that the assessee reduced the profit on the ground that the same was exempt. There are only the following four credit entries in the P&L Account of e-filed return:

Sl.No	Head of Income	Amount
1	Sales / Gross receipts of business of profession	1459563212
2	Profit on account of currency fluctuation	324275934
3	Any other income	978976
4	Closing stock	248118622
	Total	2082936744

It is seen from the e-filed return that the assessee had not mentioned the said exempted income in "Schedule-EI-Details of exempted income". It is further seen that the assessee had excluded Rs,28,96,53,662/- from book profit in the statement of income as "Profit pertaining to the earlier years". It is not known as to which item of the income credited to P&L Account was treated as "Any other exempted income or Profit pertaining to the earlier years" by the assessee. While completing the assessment u/s.143(3) on 27.02.2013 this issue was not considered and the amount of Rs.28,96,53,662/- was not added back to the returned income.

A perusal of record showed that this is a case where assessee failed to disclosure fully and truly all materials facts necessary to its assessment. For these reasons I have reasons to believe that income of Rs.28,96,53,662/- has escaped assessment in the assessment order passed on 27.02.2013."

12. The assessee has stated in their objection that they have produced the materials relevant to such reasons furnished. The respondents have stated that, mere production of such materials are insufficient and even in such circumstances, they are empowered to reopen the assessment under Explanation 1 and 2 to 147 of the Act.

13. Perusal of the reasons furnished by the Assessing authority would show that the profit and loss account of the assessee, the assessee earned book profit before taxes of Rs.48,50,31,179/- However, the assessee had offered taxable income of Rs.19,46,01,782/-, which is very less as compared to

the good profit shown in the profit and loss account. Thus, the Assessing Officer has 'reason to believe' that the assessee reduced the profits on the ground that the same was exempted. There is a strong doubt in respect of the informations provided by the assessee regarding the profit and loss account and the particulars offered. Accordingly, the authority competent has arrived a conclusion that the assessee has not disclosed true and full income particulars as required under the proviso clause to Section 147 of the Act. Consequently, the assessment was reopened. In view of the facts and circumstances, the respondent / Assessing Officer could able to establish that he had 'reason to believe' for reopening of assessment in the present case.

14. If the competent authority has 'reason to believe' that the reasons furnished are having live link with the materials traced out, then it would be enough for reopening of assessment. However, the sufficiency of the reasons need not be gone into by the High Court in a writ proceedings. The scope of power of judicial review under Article 226 is to scrutinize the processes, through which, a decision is taken by the competent authority in consonance with the provisions of the Act or not, but not the decision itself. Thus, the 'reasons to believe' if substantiated, and such reasons to believe are not change of opinion, then the assessee is bound to participate in the reassessment proceedings to establish their case in the manner known to law with reference to the factual disputes. Thus, the petitioner is bound to co-operate for the completion of the reassessment proceedings by availing the opportunities to be provided by the competent authority.

15. Accordingly, the Writ Petition is devoid of merits and stands dismissed . However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-III)

// True Copy //

Sub Assistant Registrar

vji

To

1. The Principal Commissioner of Income Tax,
   Chennai -3,
   Fourth Floor, Main Building,
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   Corporate Circle 3(2),
   Wanaparthy Block, Room No.414, 4th Floor,
   Income Tax Department,
   121, Nungambakkam High Road,
   Chennai - 600 034.

+1cc to Mr.S.Sridhar, Advocate, S.R.No.38939

+1cc to Ms.Hema Murali Krishnan, Advocate, S.R.No.38687

W.P. No. 35103 of 2016
and
W.M.P. No. 30256 of 2016

NK(CO)
RLP(17/09/2021)