IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.Nos.36522 & 35630 of 2016
W.M.P.Nos.31430 of 2016 & 10193 of 2021

M/s.Citadel Fine Pharmaceuticals Limited,
Represented by Mr.K.Rajiv, Director,
No.43, Main Road, Velacherry,
Chennai-600 042. ..Petitioner in both W.Ps

vs.

1.The Deputy Commissioner of Income-Tax.
Corporae Circle-1(2),
Chennai-600034. ...R1 in W.P.No.35630 of 2016

2.The Assistant Commissioner of Income-Tax,
Corporate Circle-1(2),
121, Mahatam Gandhi Road,
Aayakar Bhavan-Wanaparthy Block,
6th Floor, Chennai-600 034.
.. Respondent in W.P.No. 36522 of 2016
& R2 in W.P.No.35630 of 2016

PRAYER IN W.P.No.36522 of 2016 : Writ Petition filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari calling for the records of the respondent in respect of the assessment order passed under Section 143(3) read with Section 147 of the Income-Tax Act, 1961 in PAN No.AAACC1356N dated 04.10.2016 and quash the same.

PRAYER IN W.P.No.35630 of 2016 : Writ Petition filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari calling for the records of the 1st respondent in respect of the assessment notice issued for the assessment year 2009-10 under Section 148 of the Income-Tax Act, 1961 in PAN No.AAACC1356N dated 05.01.2016 and the consequential order disposing off the objections to the reasons dated 19.09.2016 passed by the second respondent and to quash the same.

In both W.P's
For petitioner :Mr.M.V.Swaroop

For Respondents :Mr.D.Prabhu Mukunsh Arunkumar
Standing Counsel for Income Tax

C O M M O N O R D E R

The writ petition in W.P.No.36522 of 2016 is filed to call for the records of the respondent in respect of the assessment order passed under Section 143(3) read with Section 147 of the Income-Tax Act, 1961 in PAN No.AAACC1356N dated 04.10.2016 and quash the same.

2. The writ petition in W.P.No.35630 of 2016 is filed to call for the records of the 1st respondent in respect of the assessment notice issued for the assessment year 2009-10 under Section 148 of the Income-Tax Act, 1961 in PAN No.AAACC1356N dated 05.01.2016 and the consequential order disposing off the objections to the reasons dated 19.09.2016 passed by the second respondent and to quash the same.

3. The petitioner is M/s.Citadel Fine Pharmaceuticals Limited.

4. At the first instance, the learned counsel appearing for the respondent raised the maintainability question on the ground that during the pendency of the writ petition, the assessment order has been passed with reference to initiation of proceedings under Section 147 of the Income Tax Act, 1961. In view of the fact that the order of assessment has already been passed, the assessee must have to approach the Appellate Authority for re-dressal of his grievances. Therefore, the writ petition is liable to be dismissed.

5. In this regard, the learned counsel appearing for the petitioner cited the judgment of the Hon'ble Division Bench of this Court in the case of P.V.P.Ventures Limited vs. Assistant Commissioner of Income Tax, Corporate Circle 5(2), Chennai reported in [2016] 65 taxmann.com 221 (Madras), wherein the similar ground was taken by the Department by stating that the assessment order was passed during the pendency of the writ petition filed by the assessee challenging the notice issued under Section 148 of the Act. The Hon'ble Division Bench of this Court made an observation that even in such cases, the Courts are empowered to adjudicate the true and correct disclosure whether made or not. If the very initiation is found to be not in consonance with the provisions of the Act, then the

contention raised by the petitioner may be considered by the writ Court under Article 226 of the Constitution of India. Relying on the said judgment, the learned counsel appearing for the petitioner reiterated that the petitioner has disclosed full and true facts before the Assessing Officer at the first instance and the Department initiated proceedings for reopening of the assessment only on change of opinion and not based on any facts as revealed by the assessee at the first instance. Therefore, the writ petition is to be adjudicated on merits.

6. The learned counsel appearing for the petitioner in nutshell contended that the reasons stated for reopening of the assessment are not in consonance with the requirements contemplated under the provisions of the Act. The reasons enumerated in proceedings dated 11.08.2016 reveal that the said facts were considered by the Assessing Officer and a finding was given in the assessment order. In this regard, the learned counsel appearing for the petitioner relied on the assessment order passed on 23.12.2011 under Section 143(3) of the Income Tax Act with reference to the assessment year 2009-2010. In the said assessment order, the Assistant Commissioner considered the claim of bad debts and a finding was arrived which reads as under:

> 3.1. Out of the total bad debts of Rs.4,99,12,188/-, the assessee has during the year written off bad debts of Rs.4,94,91,343/- thereby reducing the taxable long-term capital gain. The entire Bad debts relate to the amounts receivable from M/s.Polaris Health Care Pvt.Ltd. The assessee Company had been doing certain job works for M/s.Polaris Health Care Pvt. Ltd. and the volume of job undertaken during FY 2003-04 & 2004-05 for a value of Rs.3,21,37,707/- & Rs.3,09,37,577/- respectively. In Financial Year 2005-06, further job contract for a value of Rs.1,10,89,224/- was undertaken. In FY 2004-05, itself, the assessee knew that the amount due from M/s.Polaris Health Care Pvt.Ltd. (PHCPL for brevity) would not be recoverable and therefore, created a provision of Rs.4,07,03,328/- as at 31.03.2005. The provision was added back in the memo of computation of total income. Though the assessee realized that such amounts are irrecoverable, it continued to have business with the said person and claims to have undertaken job work for M/s.PHCPL even during Financial Year 2005-06. The ledger folios of M/s.PHCPL as appearing in the books of the Company from 01.04.2004 to 31.03.2009 were examined. Till 31.03.2005, there had been some receipts in respect

of services rendered and even TDS had been deducted on such service while making the payment. However, from 01.04.2005, the transactions are one sided and though the assessee was fully aware that the amounts could not be retrieved, it claims to have provided services to PHCPL. Notice u/s.133(6) was issued to the Principal Officer of PHCPL, on 04.10.2011 and since there was no response, a reminder was issued again on 20.10.2011, which met with same fate. It is clear from the ledger folio of PHCPL as appearing in the books of the assessee for the period from 01.04.2005 to 31.03.2006 that the transactions are in a sense, an unilateral booking which the recipient has not acknowledged. Therefore, the claim of bad debts is restricted to the period ending 31.03.2005 which amounts to Rs.4,07,03,328/- and such values of bad debts beyond the period from 01.04.2005 and beyond this value of Rs.4,07,03,328/- is not entertained.

7. Relying on the said findings made by the Assessing Officer in order dated 23.12.2011, the petitioner reiterated that the same findings are extracted in order dated 11.08.2016 for reopening of the assessment year 2009-10. Thus, the initiation of proceedings under Section 147 of the Act is nothing but change of opinion and not based on any disclosure of true and full facts. Thus, it is contended that the very reason is unsustainable and not in consonance with the mandatory provisions. There is no reason to sustain the subsequent assessment order and all further actions. In support of the said arguments, the learned counsel for the petitioner solicited the attention of this Court with reference to reply to the objections decided by the Assistant Commissioner of Income Tax dated 19.09.2016. It is contended that there is no whisper about non-disclosure of full and true facts and there was no such allegation found in the order. In the absence of any such allegation, the initiation of 147 proceedings beyond four years is untenable and liable to be quashed.

8. The learned counsel for the petitioner is of the opinion that the issues, which were already adjudicated and decided in the original assessment order dated 23.12.2011, are now sought to be re-adjudicated by way of reopening of assessment which is impermissible under law. The original assessment order elaborately reveals the fact that "in the absence of any business activity, expenditure akin to business including depreciation u/s.37(1) is not allowable. On the same fact situation elaborately discussed in 2007-08 & 2008-09, this claim of expenditure had similarly been disallowed. Further, the P& L Account for the year exhibits profit on sale of fixed assets,

taxable interest income, and exempt dividend income. The write-back of provision of Rs.93,44,509/- and sale of scrap written-off do not in any way impart the characteristic of business activity during the year. The receipts on sale of fixed assets chargeable under capital gains and interest fall under the head 'income from other sources'. It is for the same reason, that the assessee company has not got its accounts audited as stipulated u/s.44AB". It is further observed that "the claim of bad debts is restricted to the period ending 31.03.2005 which amounts to Rs.4,07,03,328/- and such values of bad debts beyond the period from 01.04.2005 and beyond this value of Rs.4,07,03,328/- is not entertained".

9. Relying on the said findings made by the Assessing Officer, the petitioner has reiterated that the very same reason has been considered for reopening of the assessment in the year 2009-10. Paragraph No.2 of the order providing reasons for reopening is nothing but the extraction of the paragraph made available in the original assessment order and further reason given was also discussed and a finding was arrived by the Assessment Officer, while making original assessment. Thus, there is no reason to sustain the reasons as furnished for reopening of the assessment for the year 2009-10.

10. The learned counsel appearing for the respondent/Department objected the said contention by stating that undoubtedly, the similarity of the subject matter dealt with in the original assessment order as well as the orders subsequently furnished reasons for reopening of the assessment may be same but certain true facts were noticed for initiation of proceedings under Section 147 of the Act. To substantiate the said contention, the learned counsel appearing for the respondent relied on the proceedings dated 19.09.2016 issued by the Assistant Commissioner of Income Tax, which is reply to the objections for reopening of the assessment under Section 147 of the Act. The learned counsel appearing for the respondent, relying on the said order, made a submission that non-disclosure of true and full facts were elaborately considered by the Competent Authority and the reasons are also furnished. The petitioner is relying on the findings regarding the claim of bad debts which was restricted to the period ending 31.03.2005 which amounts to Rs.4,07,03,328/-. With reference to the said contention, there is a clear answer provided in paragraph No.5 of the order dated 19.09.2016, which is reply to the objections for reopening of the assessment and the said paragraph reads as under:

> "5.At the outset, it has to be mentioned that there is no change of opinion as stated by the assessee. It is relevant to produce the following from

order dated 23.12.2011 "Para 3.1...The ledger folios of M/s.PHCPL as appearing in the books of the company from 01.04.2004 to 31.03.2009 were examined. Till 31.03.2005, there had been some receipts in respect of services rendered and even TDS had been deducted on such service while making the payment, However, from 01.04.2005, the transactions are one-sided and though the assessee was fully aware that the amounts could not be retrieved, it claims to have provided services to PHCL. Notice u/s 133(6) was issued to the Principal Officer of PHCPL on 04.10.2011 and since there was no response, a reminder was issued again on 20.10.2011, which met the same fate. It is clear from the ledger folio of PHCPL as appearing in the books of the assessee for the period from 01.04.2005 to 31.03.2006 that the transactions are in a sense an unilateral booking which the recipient has not acknowledged".

11. This apart, the said order categorically dealt with non-disclosure of true and full facts. The learned counsel appearing for the respondent relied on the observations made that "the Assessing Officer had no time to verify with PHBL about the genuineness of the transactions. Write of bad debts is relating to business and is not eligible for set off against Capital Gains. As per Section 71, Current year Loss under any head can be set off against under any head with exceptions. In this case, the loss has not arisen on account of business activities during the current year 01.04.2008 to 31.03.2009. Bad debts relate to business done before 01.04.2005. The indent of legislature is to provide judicial relief to assessee when it had incurred bad debts during the course of business activities and the same may be deducted from income from business. Moreover, for deduction from LTCG/STCG, there should be attendant expenses relating to the subject Capital asset, this is not in the assessees case. Moreover, the assessee has waited for 4 years and conveniently claimed bad debts to be deducted from Capital Gains. It is a fact that if there had been no STCG/LTCG, the bad debts might not have been claimed for the AY 2009-10.

12. Thus, it seems that the Authorities could able to draw an inference with reference to the disclosure made by the assessee during the original assessment. Undoubtedly, the facts appears to be similar but certain intricacies regarding transactions were identified by the Income Tax Department as narrated above and they formed an opinion that there is a reason to believe regarding escape of income.

13. This Court is of the opinion that the payment of Income Tax is the law. Provisions of Tax laws are to be interpreted in its strict sense. A constructive interpretation is imminent to ensure that the purpose and object of the tax laws are met with.

14. Certain inferences or doubts based on facts raised regarding the assessment may provide a cause for reason to believe. "The reason to believe" contemplated under the Act provides wider power to the Competent Authority to reopen the assessment in order to adjudicate the facts, which were not disclosed at the first instance by the assessee. As pointed out, the Income Tax Department, relying on the disclosures made by the assessee, passed an assessment order. That exactly is the reason for enacting provisions for reopening of the assessment. It is based on the information provided by the assessee and believing on the same, the assessment orders are passed. Only when the Department is able to receive some information or able to draw some inference from and out of the information provided and some materials are made available, then alone, they will get an opportunity for reopening the assessment for the purpose of proceeding with reopening of assessment. Thus, the concept of reason to believe cannot be restricted in a narrow compass so as to cripple the power of the competent authority for invoking the provisions of Section 147 of the Act. Even new informations not considered if causes a reason to believe, then the Authority must be permitted to go for reassessment. The object of the provision is to ensure that the asseesee discloses the true and full income and the tax paid in accordance with the provisions. In order to meet out the purpose and object, the assessee should not be allowed to escape from the clutches of law on certain flimsy reasons. Undoubtedly, the assessee gets an opportunity even after reopening of the assessment proceedings and such opportunities are to be availed for the purpose of clarifying doubts, reasons or informations gathered by the Department to establish non-disclosure of true and full facts by the assessee. When all these opportunities are provided to the assessee under the provisions of the Act, the High Court is expected to be slow in exercising the power under Article 226 with reference to certain disputed facts. When there are disputes regarding the disclosure, the best Authority would be the Income Tax Department and certainly, not the High Court under Article 226 of the Constitution of India.

15. The power of High Court under Article 226 is to scrutinize the process through which a decision is taken in consonance with the provisions of the Act and certainly, not the decision itself. This being the principles to be borne in mind, while considering the writ proceedings under Article 226 of the

Constitution of India, a doubt raised by the Department regarding full and true disclosure of the facts by the assessee and if there are some materials to establish the same, the Authorities have to initiate action based on the concept of reason to believe and the assessee must co-operate for the assessment by defending his case and by availing the opportunities contemplated under the provisions of the Act.

16. Contrarily, if the High Court takes an exception with reference to certain facts and circumstances, then there is a possibility of escape from the clutches of Tax proceedings, which is certainly not preferable. Further, the Income Tax Authorities are experts and they must be provided with an opportunity to consider the defence as well as the materials identified, by affording an opportunity to the assessee. In the present case, in proceedings dated 19.09.2016 which is reply to the objections for reopening of the assessment under Section 147, there is a clear finding by the Authority that "the Assessing Officer had no time to verify with PHBL about the genuineness of the transactions. Write of bad debts is relating to business and is not eligible for set off against Capital Gains. Further, a finding is made that the assessee has waited for 4 years and conveniently claimed bad debts to be deducted from Capital Gains". These are all certain contra facts, which are all raised as grounds for reopening of the assessment as the Authorities have reason to believe that there was no true and full disclosure by the assessee, at the time of the original assessment.

17. This being the facts and circumstances, this Court is of the considered opinion that the respondents, after initiation of proceedings under Section 147 of the Act, proceeded with reassessment and the assessment order was also passed on 04.10.2016 itself. Now four years lapsed and further, in respect of said assessment order, the petitioner has to approach the competent authority for redressal of grievances if any exists.

18. The learned counsel appearing for the petitioner made a submission that in view of pendency of the writ petition, the assessee has not initiated any action against the assessment order. Therefore, he must be provided with an opportunity as the assessment order was passed without providing any opportunity to the petitioner.

19. This being the grievances of the writ petitioner, this Court is of the opinion that the petitioner has to prefer an appeal contemplated under the Act and in the event of filing any such appeal, the Appellate Authority may consider the case on merits and in accordance with law.

20. With these observations, the writ petitions stand dismissed. No costs. Consequently, connected miscellaneous petitions are also closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

ssb

To

1.The Deputy Commissioner of Income-Tax.
Corporae Circle-1(2),
Chennai-600034.

2.The Assistant Commissioner of Income-Tax,
Corporate Circle-1(2),
121, Mahatam Gandhi Road,
Aayakar Bhavan-Wanaparthy Block,
6th Floor, Chennai-600 034.

+1 CC to M/s. Hema Muralikrishnan, Advocate sr 24629.

W.P.Nos.36522 & 35630 of 2016

SPD(CO)
SP(29/06/2021)