IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :30.06.2021
CORAM
THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.37562 of 2016
and
W.M.P.No.32188 of 2016

M/s.Vestas Wind Technology India Private Limited,
Represented by its Director – Finance,
Mr.Govindaraj Kolappan
298, Rajiv Gandhi Salai,
Sholinganallur,
Chennai – 600 119. ...Petitioner

Vs.

1.Assistant Commissioner of Income Tax,
Company Circle 3(2)
4th Floor, Wanaparthy Block,
121, Mahatma Gandhi Road,
Chennai – 600 034.

2.Principal Commissioner of Income Tax-3,
4th Floor, Main Building,
121, Mahatma Gandhi Road,
Chennai – 600 034. ... Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India to issue of Writ of Certiorari, calling for the records on the file of the first respondent and quash the impugned order in AAACA9274F/9808-V/09-10 dated 09.09.2016 along with impugned notice issued by the respondent under Section 148 of the Act in Pan No.AAACA9274F dated 25.01.2016.

For Petitioner : Mr.N.V.Balaji

For Respondents : Mrs.Hema Muralikrishna
Standing Standing Counsel
for Income Tax

O R D E R

The notice issued under Section 148 of the Income Tax Act dated 25.01.2016 and the order dated 09.09.2016, disposing of the objections filed by the writ petitioner are under challenge in the present writ petition.

2. The petitioner is a Private Limited Company, incorporated under the Companies Act, 1956 and is a wholly owned

subsidiary of Vestas Wind Systems A/S, a company incorporated in Denmark. The petitioner is engaged in the business of manufacture, installation, marketing, service and maintenance of Wind Turbine Generators.

3. The petitioner filed its return of income electronically on 29.09.2009, for the Assessment Year 2009 - 10, declaring a total income amounting to INR 200,16,85,020. Subsequently, the petitioner filed a revised computation of total income and taxes admitting income of INR 218,59,63,810 on 13.07.2012, after deposition of additional tax liability of INR 8,04,91,137. The assessment proceedings were initiated by the first respondent. Notice was issued under Section 143 (2) of the Act on 18.08.2010 followed by notice under Section 142 (1) of the Act calling for information on 06.12.2012. The petitioner made a submission that all the details, books of accounts, information were provided. The Assessing Officer completed the scrutiny and passed the final order of assessment on 04.02.2014 under Section 143 (3) of the Act.

4. While so, surprisingly the respondents issued notice under Section 148 of the Income Tax Act on 25.01.2016. The petitioner vide letter dated 25.02.2016 sought for the reasons for reopening of assessment. The Assessing Officer furnished the reasons for reopening of assessment in proceedings dated 29.04.2016. Thereafter on 15.06.2016, the petitioner submitted its objections in detail and the said objections were disposed of by the Assessing Officer, vide letter dated 09.09.2016.

5. The learned counsel for the petitioner mainly contended that it is a classic case of change of opinion where the materials made available during the original assessment was taken as a cause for reopening of assessment under Section 147 of the Act. Thus the very initiation itself is not in consonance as contemplated under Section 147 of the Act. The learned counsel for the petitioner referred the objections filed by the petitioner on 15.06.2016, wherein all the judgments are given. The petitioner has elaborately stated the materials produced at the time of original assessment and informed the respondents that there is no new tangible material warranting reopening of proceedings under Section 147 of the Act and therefore, all further actions to be established.

6. The grievance of the writ petitioner is that the respondent has not disposed of the specific objections raised with reference to the informations and materials adjudicated during the original assessment. In this regard, the petitioner referred the bullet points clearly in its objections dated 15.06.2016 referring the said factual aspects. The learned counsel for the petitioner reiterated that the disposal of objection / objections is non-application of mind and accordingly, the impugned order is liable to be set aside.

7. The learned Senior Standing Counsel appearing on behalf of the respondents disputed the said contentions raised on behalf of the petitioner and is of an opinion that the petitioner has not disclosed fully and truly all material facts necessary to its assessment and based on which the assessing officer has reason to believe that the income chargeable to tax has escaped assessment. The suspension, non-disclosure of informations and other details are to be considered by the Assessing Officer while proceeding for reassessment. However, the objections made by the petitioner was considered in entirety and an order is passed by stating that mere production of account books or other evidence from which material evidence could with due diligence have been discovered by the AO does not necessarily amount to a disclosure within the meaning of the first proviso to Section 147. There will be some other informations or reasons for the Assessing Officer for reopening of assessment. All those informations, facts and circumstances are to be considered while proceeding for reassessment. Thus, this Court cannot go into such intricacies, details, informations, documents etc., which has to be done by the Assessing Officer at the time of reassessment.

8. Section 147 of the Act contemplates that the Assessing Officer has reason to believe that income chargeable to tax has escaped assessment. Explanation 1 enumerates that mere production of account books or other evidence from which material evidence could with due diligence have been discovered by the AO does not necessarily amount to a disclosure within the meaning of the first proviso to Section 147. Therefore, the objections, if at all, submitted with reference to the materials and informations, have to be adjudicated during the original assessment. The objections are submitted mainly on the ground that the return of income was filed truly with full disclosure and the Assessing Officer scrutinized and passed the assessment order based on materials. However, with reference to the same transaction reopening proceedings are initiated under Section 147 of the Act.

9. This Court is of the considered opinion that explanation -1 reveals that mere production of account books or other evidence in the original assessment order is one aspect of the material and even in such circumstances, the Assessing Officer is empowered to initiate reopening proceedings, if he has reason to believe that any income chargeable to tax has escaped assessment. Further explanation 2(c) provides various circumstances under which reassessment proceedings can be initiated where assessment has been made already but income chargeable under tax, then also it is permissible for reopening of assessment and in such circumstances materials and informations may be one and the same. The interpretation of

assessment and the determination of tax may differ. This possible circumstances cannot be countenanced and may be solved only after complete adjudication. The materials submitted by the Assessee during the original assessment became irrelevant and other circumstances contemplated under Explanation 2 (c) would also enable the Assessing Officer to reopen the assessment.

10. This being the wider scope provided under Section 147 of the Act, the objections raised by the petitioner that all the materials, informations provided and the disposal of the objections, are not proper while the Assessing Officer disposing of the objections has formed an opinion that he has reason to believe for reopening of assessment and the reasons are sufficient enough to proceed for assessment / reassessment, then the High Court would not interfere by venturing into the adjudication of complete facts and circumstances, which is impermissible in a writ proceedings.

11. Thus, this Court do not find any perversity or infirmity as such in respect of the initiation of proceedings under Section 147 of the Act and consequently, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Pns

To

1.The Assistant Commissioner of Income Tax,
Company Circle 3(2)
4th Floor, Wanaparthy Block,
121, Mahatma Gandhi Road,
Chennai – 600 034.

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4th Floor, Main Building,
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+1cc to Ms.Hema Muralikrishnan, Advocate, S.R.No.30121
+1cc to Mr.N.V.Balaji, Advocate, S.R.No.20173

W.P.No.37562 of 2016
and
W.M.P.No.32188 of 2016

UM(CO)
SB(03/08/2021)