



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 25.06.2021

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
W.P.No.38391 of 2016
and
W.M.P.No.32880 of 2016

McKinsey Global Service India
Private Limited,
Represented by its Director,
Ms.Dorte Landwehr,
5/142, Tower B, 17-19th floor,
World Trade Center Rajiv
Gandhi Salai, OMR Perungudi Chennai,
Chennai - 96.

(Cause title amended vide order
dated 21.06.2021 made in
W.M.P.No.13647 of 2021 in W.P.No.38391/16)

..Petitioner

vs

The Assistant Commissioner of Income Tax,
Corporate Circle 3(2),
Room No.414, IV Floor, Wanaparthi Block,
121, Mahatma Gandhi Road,
Chennai - 600 034.

..Respondent

Prayer: Writ Petition filed under Article 226 of the
Constitution of India praying to issue a Writ of Certiorari, to
call for the records on the file of the respondent and quash the
impugned notice in PAN No.AAACV3342H dated 04.03.2016 under
Section 143(2) of the Income Tax Act.

For Petitioner : Mr.N.V.Balaji
For Respondents : Mr.D.Prabhumukunth Arunkumar
Standing counsel
[For Income Tax]

O R D E R

The Notice issued under Section 143(2) of the Income Tax Act
in proceedings dated 04.03.2016 is under challenge in the
present writ petition.

2. The petitioner is a wholly owned subsidiary of McKinsay &
Company, Inc. was incorporated on 16th June 1997 as a Private
Limited company with its Registered office at Chennai, and
commenced its operations in September 1997. The petitioner has
service centres located in Chennai and in Trivandrum and are
registered as STPI and avails tax holiday benefit under Section



3. The petitioner states that the company filed its return of income for the Assessment Year 2009-10 on 29.09.2009 and the case was selected for scrutiny by the respondent and referred to the Transfer Pricing Officer under Section 92CA of the Act. The petitioner submitted the audit reports to substantiate its claim for the deduction under Section 10A of the Act. The details sought for were also produced and acknowledged by the respondent. After considering all the documents as well as the informations provided by the petitioner, the Transfer Pricing Officer passed his order and communicated the same to the Assessing officer, who in turn, completed the assessment under Section 143(3) of the Act and passed the assessment order on 13.03.2013, accepting the income returned by the petitioner. While so, the respondent re-opened the assessment and a Notice under Section 148 was issued. The petitioner responded the notice with request to treat the return filed on 29.09.2009 as the return filed in response to notice issued under Section 148 of the Act.

5. The learned counsel for the petitioner made a submission that the procedures contemplated are not followed and even before furnishing reasons for re-opening of assessment, impugned notice under Section 143(2) of the Act was issued.

6. The contention of the petitioner is that the principles laid down by the Hon'ble Supreme Court of India, re-opening of assessment proceedings in the case of GKN Driveshafts India Ltd., Vs. ITO reported in (2003) 259 ITR 19 (SC) has not been complied with. Thus, the impugned notice is liable to be set aside.

7. The authority competent under the Statute is expected to furnish reasons for every decision taken. Two components are of paramount importance. Adherence of the procedures contemplated, firstly and furnishing reasons for arriving a particular decision, thereafter. Thus, on initiation of re-opening proceedings by invoking Section 147 of the act, the Assessing Officer is obligated to follow the procedures contemplated and furnish the reasons for arriving a particular decision. In the present case, reasons are furnished for reopening of assessment.



The objections are to be disposed of in a meaningful manner, in view of the fact that the reopening procedures in the present case falls beyond the period of four years and within six years. Thus, the ingredients contemplated in the proviso clause is to be complied with. Thus, the consideration of objections and the findings for reopening are of vital and in the absence of any reasons, one cannot form an opinion that reopening of assessment is made with reference to the conditions stipulated in the proviso clause to Section 147 of the Act. Conditions under the provisions are mandatory. In order to establish the compliance of conditions, the authority competent must provide reasons, stating that the conditions stipulated in the proviso clause has been complied with. Thus, a non-speaking order in this regard cannot be sustained and therefore, the impugned order is to be construed as lacking, on application of mind and the objections raised by the petitioner are not considered, nor a finding is given. Contrarily, the impugned order has been passed merely reproducing the provisions of the Statute, which is insufficient and therefore, this Court is inclined to consider the writ petition.

8. In view of the facts and circumstances, the impugned notice issued by the respondent in proceedings in PAN No.AAACV3342H dated 04.03.2016 issued under Section 143(2) of the Income Tax Act is quashed and the matter is remanded back to the respondent for fresh consideration by following the procedures as contemplated. The respondent is directed to follow the procedures as contemplated under the provisions of the Act and the principles laid down by the Apex Court in the case of GKN Driveshafts India Ltd., Vs. ITO reported in 259 ITR 19 (SC) and proceed with the reassessment by affording opportunity to the writ petitioner. The said exercise is directed to be done as expeditiously as possible.

9. With these directions, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

Kak



To
The Assistant Commissioner of Income Tax,
Corporate Circle 3(2),
Room No.414, IV Floor, Wanaparthi Block,
121, Mahatma Gandhi Road,
Chennai - 600 034.

+1cc to M/s.N.V.Balaji, Advocate SR.No. 29580

+1cc to M/s.Hema MuraliKrishnan, Advocate SR.No. 29505

W.P.No.38391 of 2016

PL(CO)

B.VC(19.07.2021)