IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.39545 of 2016
and W.M.P.Nos.33822 of 2016 & 22073 of 2020

Hanon Automotive Systems India Private Limited,
(Formerly Known as M/s.Visteon Automotive
Systems India Private Limited,)
Rep. By its Director Sri Swaminathan Balasubramanian,
Keelakarani Village,
Malrospuram Post,
Maraimalai Nagar,
Chengalpattu 603 204. ...Petitioner

(Cause title amended by this Court vide order
dated 21.06.2021 in W.M.P.No.11416/2021)

Vs.

1.The Assistant Commissioner of Income Tax,
Corporate Circle 3(2),
121, Mahatma Gandhi Road,
Nungambakkam, Chennai 600 034.

2.The Commissioner of Income Tax – 3,
121, Mahatma Gandhi Road,
Nungambakkam, Chennai 600 034. ...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records on the file of the 1^{st} respondent and quash the impugned order in No:AAACM6890R/556-V/2009-10 dated 12.09.2016 along with the notice issued by the 1^{st} respondent under Section 148 of the Income Tax Act, 1961 in PAN: AAACM6890R dated 25.01.2016.

For Petitioner : Mr.N.V.Balaji

For Respondents : Mr.D.Prabhumukunth Arunkumar
(Standing Counsel for IT)

ORDER

The order disposing of the objections issued with reference to the initiation of the reopening of assessment proceeding under Section 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') in proceedings dated 12.09.2016 is under challenge in the present Writ Petition. The petitioner prayed to quash the notice issued under Section 148 of the Act itself along with the said liberty.

2.The facts in nutshell to be considered is that the petitioner is a Private Limited Company engaged in the business of manufacturing climate control systems, clusters and audio head units for passenger Cars. The petitioner has filed its Income Tax electronically on 30.09.2009 for the assessment year 2009-10. The 1st respondent initiated assessment proceedings by issuing notice under Section 143 (2) of the Act on 18.08.2010 followed by notice dated 05.12.2012 under Section 143 (2) read with Section 129 and Section 142 (1) of the Act, calling for further investigation for the purpose of assessment of income of the petitioner. By completing the scrutiny, the Assessing Officer passed the order of final assessment on 15.03.2013 considering the book of accounts, details and the informations as well as documents furnished by the petitioner/assessee. After a lapse of four years, but within a period of six years, a reopening proceedings was initiated under Section 148 of the Act by the 1st respondent. Notice under Section 148 of the Act was issued on 25.01.2016 and the petitioner responded to the notice on 03.02.2016. Before following the procedures contemplated by furnishing reasons for reopening, the 1st respondent issued a notice under Section 143 (2) of the Act on 04.02.2016 which was also challenged by the writ petitioner in W.P.No.39546 of 2016. However, thereafter, the request of the petitioner was complied with and the 1st respondent furnished reasons and the petitioner submitted his objections for the reasons furnished. The objections filed by the petitioner on 13.06.2016 was disposed of by passing an impugned order on 12.09.2016.

3.The learned counsel appearing for the petitioner strenuously contended that the Assessing Officer has committed several mistakes in the reopening proceedings in the case of the petitioner. Section 143 (2) notice was issued without following the procedures contemplated and even before the expiry of 30 days time limit granted by the Assessing Officer in notice dated 25.01.2016 issued under Section 148 of the Act. However, subsequently, the reasons were furnished and the petitioner submitted its objections for reopening of assessment for the assessment year 2009-10. The impugned order disposing the objections was passed on 12.09.2016 and the categorical objections given with reference to the reasonings furnished by the 1st respondent has not been considered nor any findings are given. Thus, the impugned order is non-speaking and the respondent issued the order without any application of mind.

4.The learned counsel for the petitioner solicited attention of this Court with reference to the objections filed by the petitioner on 13.06.2016 with reference to the reasons given for reopening of assessment. It is contended that the petitioner has given objections in a categorical manner, but none of those objections are considered while disposing of the objections by the 1st respondent.

5.The learned Standing Counsel appearing for the respondents though made an attempt, could not able to defend the specific ground raised by the petitioner. However, the learned Standing Counsel appearing for the respondents merely referred the impugned proceedings dated 12.09.2016 by stating that the case was reopened after recording valid reasons wherein the assessee failed to disclose fully and truly all the 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 with the prior approval of the P.CIT-3, Chennai.

6.This Court is of the considered opinion that mere extraction of the provisions of the Income Tax Act by the authorities are insufficient to meet out the requirement of law. Undoubtedly, Section 147 of the Act empowers the Assessing Officer to reopen the assessment if he has any reason to believe. However, such reason to believe must have certain tangible materials for the purpose of proceeding with the reopening of the assessment. The power under Section 147 of the Act undoubtedly is wider. However, the Courts have repeatedly ruled that the rights of the assessee is to be protected and the opportunity contemplated must also be adhered to. It is not as if by reproducing the provisions of the Act, the Assessing Officer is empowered to reopen the assessment. Once Section 147 of the Act is invoked and notice under Section 148 of the Act is issued, then, the Assessing Officer is bound to follow the procedures contemplated as well as the principles laid down by the Hon'ble Apex Court of India.

7.The notice issued under Section 143 (2) of the Act in proceeding dated 04.02.2016 was undoubtedly premature and the learned Standing Counsel appearing for the respondents, in respect of the other Writ Petition filed by the petitioner in W.P.No.39546 of 2016, made a submission that the said notice was not acted upon. Thus, the said Writ Petition was allowed.

However, subsequently, the procedures were followed by the respondents by furnishing reasons for reopening of assessment. On receipt of the said proceeding, the petitioner/assessee had submitted his detailed objections on 13.06.2016. The said objections reveal that with reference to the reasons furnished for reopening in proceeding dated 29.04.2016, the petitioner submitted clear and categorical reply which reads as under:

> "Based on the perusal of the reasons recorded by you goodself for reopening the assessment, we submit most humbly that the proceedings were initiated on the very same material which was available while completing the assessment under Section 143 (3) of the Act. We plead that the reasons recorded suggest application of mind to the same set of facts, which were available at the time of assessment under Section 143(3) of the Act and hence is a mere change of opinion. A comparative summary of the reasons recorded and the submissions made during the assessment course of proceedings under Section 143(3) of the Act is produced as under:

S. No.	Reasons recorded for re-opening	Submissions made before AO during the course of 143(3) proceedings
1.	The Company failed to disallow Fringe Benefits Tax while computing the income for the subject AY	Memorandum of computation of income being Annexure 4A to the submission dated 17 December 2012 was made before the AO. Profit before taxes were adopted as base for computing the taxable income. We submit most humbly that it is an erroneous observation and no income has escaped assessment owing to the same. A copy of the submission and specified Annexure is attached to this letter as 'Annexure 4'.

S. No.	Reasons recorded for re-opening	Submissions made before AO during the course of 143(3) proceedings
2.	Non-deduction of tax at source on fee for technical services	Vide submission dated 22 February, 2013, a detailed submission reconciling Schedule 5 and 9 of Tax Audit Report was submitted before the AO. All material facts were fully disclosed during the course of original assessment proceedings. We submit most humbly that this tantamount to review of same set of material as available during the course of assessment proceedings and hence any attempt to re-examine the same would result in change of opinion. A copy of the submission and relevant Annexure is attached to this letter as 'Annexure 5'.
3.	Non-deduction of tax at source on service charges paid to Ford India Private Limited	Vide submission dated 14 March 2013, a detailed submission against the query raised by the AO was submitted, along with the copy of the agreements. All material facts were fully disclosed during the course of original assessment proceedings. We submit that the observation qualifies as change of opinion. A copy of the submission and relevant Annexure is attached to this letter as 'Annexure 6'.
4.	Non-deduction of tax at source on advertisement charges paid through Mahindra & Mahindra	Vide submission dated 14 March 2013, submission against the query raised by the AO was submitted, disclosing that reimbursement was on a cost to cost basis. All material facts were fully disclosed during the course of original assessment proceedings. We submit that the observation qualifies as change of opinion. A copy of the submission and relevant Annexure is attached to this letter as 'Annexure 6'.

S. No.	Reasons recorded for re-opening	Submissions made before AO during the course of 143(3) proceedings
5.	Capital expenditure debited to Profit and Loss Account	On 5 December 2012, the AO has issued a detailed questionnaire, wherein Point XII required the Company to produce the breakup of Miscellaneous expenses. Vide submission dated 31 January 2013 the Assessee made the said submissions. All material facts were fully disclosed during the course of original assessment proceedings. We submit most humbly that the observation qualifies as change of opinion. A copy of the submission and relevant Annexure is attached to this letter as 'Annexure 7'.

Based on the above, we submit that the reasons recorded for reopening the assessment qualifies as change of opinion on the same set of material. Hence, the said proceedings lack jurisdiction and accordingly, not maintainable.

8.The grievances of the writ petitioner is that the said objections submitted elaborately furnishing reasons are not even looked into nor considered by the respondents while disposing of the objections.

9.Perusal of the order impugned dated 12.09.2016 in disposing of the objections filed by the petitioner reveals that none of the objections raised by the petitioner was considered nor any findings are made available and therefore, the provisions of the Act has not been met with and consequently, the order impugned is to be construed as non-speaking and lack of application of mind on the part of the respondents.

10.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 reopening 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 reasons 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 class 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 done with reference to the conditions stipulated in the proviso class 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 class 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.

11.In view of the facts and circumstances, the impugned order passed by the 1st respondent in his proceedings No.AAACM6890R/556-V/2009-10 dated 12.09.2016 is quashed and the matter is remanded back to the respondents for reconsideration of the objections submitted by the petitioner for reopening of assessment for the assessment year 2009-10, on 13.06.2016 and pass order disposing of the objections afresh, by furnishing the reasons and by considering the objections. The said exercise is directed to be done by the respondents within a period of twelve weeks from the date of receipt of a copy of this order.

12.Accordingly, the Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

gsa

To

1.The Assistant Commissioner of Income Tax,
Corporate Circle 3(2),
121, Mahatma Gandhi Road,
Nungambakkam, Chennai 600 034.

2.The Commissioner of Income Tax - 3,
121, Mahatma Gandhi Road,
Nungambakkam, Chennai 600 034.

+1cc to Mr.N.V.Balaji, Advocate Sr.28675

+1cc to M/s.Hema Muralikrishnan, Advocate, S.R.No.28690

[05/05/2022]

W.P.No.39545 of 2016

ak-II[co]
srg 22/07/2021