IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2021

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.39546 of 2016
and W.M.P.Nos.33823 of 2016 & 22077 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.11421/2021)

Vs.

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

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 respondent and quash the impugned notice in PAN No:AAACM6890R dated 04.02.2016 under Section 143(2) of the Income Tax Act, 1961.

For Petitioner : Mr.N.V.Balaji

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

ORDER

The notice issued under Section 143(2) of the Income Tax Act, 1961 (hereinafter, referred to as 'the Act') in proceedings dated 04.02.2016 is under challenge in this Writ Petition.

2.The learned counsel appearing on behalf of the petitioner mainly contended that the impugned notice is untenable in view of the fact that even before furnishing reasons for reopening of assessment and even before disposing of the objections to be submitted by the petitioner, the notice under Section 143(2) of the Act was issued for the purpose of proceeding with re-assessment. Such a procedure followed by the respondent is in violation of the procedures contemplated and further, contrary to the precedence laid down by the Hon'ble Apex Court of India. The notice under Section 148 of the Act was issued in proceeding dated 25.01.2016, stating that the petitioner is required to deliver to the Assessing Officer within 30 days from the date of service of the notice, a return in the prescribed form of the income for the assessment year 2009-10. The petitioner submitted his response on 03.02.2016, stating that the Return of Income ('ROI') filed earlier shall be treated as right. Again, the Assessing Officer in proceedings dated 04.02.2016, issued the notice under Section 143(2) of the Act, directing the petitioner/assessee to appear in person or through representative on 19th February, 2016. The learned counsel appearing for the petitioner reiterated that the period of 30 days contemplated in the notice issued under Section 148 of the Act had not expired during the relevant point of time and further, the petitioner, in his letter dated 03.02.2016, requested the Assessing Officer to furnish the reasons for reopening. Before following the procedures contemplated, the Assessing Officer issued notice under Section 143(2) of the Act and therefore, the said impugned order is untenable. After issuing the impugned proceedings on 04.02.2016, the Assessing Officer furnished the reasons for reopening of assessment in a proceeding dated 29.04.2016 and the petitioner filed his objections on 13.06.2016 and thereafter, the objections were disposed of on 12.09.2016.

3.The leaned counsel appearing for the respondent, relying on the counter, made a submission that though the notice under Section 143(2) of the Act which is impugned was issued on 04.02.2016, the same was not acted upon in view of the fact that subsequently, the department furnished reasons for reopening and the petitioner also submitted objections and the said objections were also considered and order was passed, disposing of the objections. Thus, the principles laid down by the Hon'ble Apex Court of India in the case of GKN Driveshafts India Ltd., Vs. ITO reported in 259 ITR 19 (SC) were scrupulously followed. Therefore, the order impugned dated 04.02.2016 lost its significance and was not acted upon. Pursuant to the order dated 12.09.2016 disposing of the objections submitted by the petitioner, now the respondent has to proceed with the re-assessment by following the further procedures and by affording further opportunity to the assessee.

4.Considering the submissions made by either side, this Court is of the considered opinion that undoubtedly, the order impugned dated 04.02.2016 issued under Section 143 (2) of the Act was not in accordance with the procedures contemplated. Even before furnishing reasons for reopening of assessment and before considering the objections to be submitted by the petitioner/assessee, the Assessing Officer directed the assessee to appear in person or through representative for the purpose of proceeding with the re-assessment. However, the respondent had not acted upon and further, considered the request made by the petitioner and issued an order furnishing reasons for reopening and thereafter, the petitioner had also submitted his objections for the reasoning and the said objections were also considered and an order was passed on 12.09.2016. In view of the fact that the order impugned dated 04.02.2016 issued under Section 143 (2) of the Act is not been acted upon and further, the said order has not caused any prejudice to the interest of the petitioner for the purpose of defending his case, no further consideration is required. However, the order was issued not in accordance with the procedures contemplated. Thus, the order passed by the respondent in proceeding in PAN No.AAACM6890R dated 04.02.2016 became non-est, and the respondent is directed to proceed with all further proceedings issued in accordance with law, and complete the re-assessment proceedings as expeditiously as possible.

5.Accordingly, the Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

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

+1cc to Mr.N.V.Balaji, Advocate Sr.28674

W.P.No.39546 of 2016

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