IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 02.03.2021

DELIVERED ON: 16.04.2021

CORAM:

THE HONOURABLE MR. JUSTICE C.SARAVANAN

W.P.No.15698 of 2018

M/s. Home Finder Housing Limited,
Rep. by its Chairman and Managing Director,
K.S. Ramalingam,
Block No.10, Homefinders Estate,
75/2, Thiruvalluvar Salai, Ramapuram,
Chennai - 600 0089. ... Petitioner

Vs.

Income Tax Officer,
Corporate Ward 2(3),
Room No.504, Wanaparthy Block, 5th Floor,
121, Mahatma Gandhi Road, Nungambakkam,
Chennai 600 034. ... Respondent

Prayer : Writ Petition is filed under Article 226 of the Constitution of India praying for to issue a Writ of Certiorarified Mandamus or any other writ, order or direction in the nature of a Certiorarified Mandamus calling for the records of the respondent contained in its notice issued under Section 148 of the Income Tax Act, 1961, for PAN:AAACH1651B, for the assessment year 2012-13, dated 16.10.2015 and all proceedings in furtherance thereof, including but not limited to the order dated 18.06.2018 passed by the respondent disposing of the petitioner's objections to the re-opening of the income tax assessment for the assessment year 2012-13, and to quash the same as arbitrary, unjust and illegal and to consequently forbear the respondent from in any manner reassessing the petitioner's income under Section 147 of the Income Tax Act, 1961 for the assessment year 2012-13.

For Petitioner : Mr.Suhrith Parathasarathy

For Respondent : Ms.Hema Muralikrishnan
Senior Standing Counsel

O R D E R

This is the second round of litigation, against the attempt of the respondent Income Tax Officer to re-open the assessment for the Assessment Year 2012-2013. The Original Assessment order under Section 143(3) was passed on 23.03.2015. This assessment was sought to be reopened by a notice dated 20.11.2019 within a normal period of limitation under Section 147 of the Income Tax Act. The reasons for re-opening the assessment given to the petitioner vide communication dated 05.02.2016 read as under:

> "It has been observed that the assessee has claimed erroneous reduction in the value of inventory being flats under construction as per joint venture development, which will be complete on receipt of share of flats apart from cash by the assessee company
>
> as agreed in the Joint Venture document which has not taken place during the year. Hence, the claim of reduction to the tune of Rs.1,63,58,148/- is found not to be in order and thus the income to the extent is considered as having escaped assessment."

2.The petitioner sent a representation and objected to for re-opening of the Assessment. Under these circumstances, Income Tax Oficer proceeded to pass an Assessment Order dated 13.12.2016 under Section 143(3) of the Income Tax Act read with Sections 147 and 148 of the Income Tax Act, 1961.

3.The said Assessment was challenged by the petitioner in W.P.No.1019 of 2017. The Writ petition was partly allowed by an order dated 07.04.2017 by directing the respondent to pass a speaking order in terms of the Hon'ble Supreme Court in Gkn Driveshafts (India) Ltd Vs. Income Tax Officer and ors.[(2003)1 SCC72].

4.Aggrieved by the same, the petitioner filed W.A.No.463 of 2017 before the Division Bench which came to be disposed by an order dated 25.04.2018. The Division Bench upheld the order of the the learned Single Judge. Pursuant to the said order dated 25.04.2018 of the Division Bench of this Court in W.A.No.463 of 2017, the impugned speaking order has been passed and served on the petitioner purportedly in terms of the decision of the Hon'ble Supreme Court in Gkn Driveshafts (India) Ltd Vs. Income Tax Officer and ors. referred to supra by over ruling the objection of the petitioner against reopening of the Assessment under Section 143(3) read with Sections 147 and 148 of the Income Tax Act.

5. The case of the petitioner in this writ petition is that the respondents have not made out a case for re-opening the Assessment. It is based on change of opinion and that there are no additional information that has come to the light of respondent for reopening of the Assessment under Sections 147 and 148 of the Income Tax Act.

6.In this connection, the learned counsel for the petitioner submits that the impugned communication over ruling the objection of the petitioner is liable to be quashed in the light of the Hon'ble Supreme Court in the decisions in the following cases:-

> "1.Commissioner of Income Tax Vs Kelvinator of India Ltd, 2001 SCC Online Del 1515.
> 2.Techspan India Private Limited Vs Income Tax Officer, (2006) 283 ITR 212 (Del)
> 3.Commissioner of Income Tax Vs. Usha International Ltd, (2012) 348 ITR 485 (Del)
> 4.Asianet Star Communications Pvt Ltd V. Assistant Commissioner of Income Tax.
> 5.Shivsu Canadian Clear Waters Limited VS. Income Tax Officer.
> 6.CIT VS. M/s.Elgi Tread (India) Ltd. In TCA Nos. 1313 to 1324 and 1326 and 1327 of 2007."

7. On merits, the learned counsel for the petitioner further submits that the petitioner had entered into a join venture agreement with the owner of land Mr.T.Thiyagarajan as early as 16.06.1996 for developing and promoting an extent of 30,056.40 sq.ft of land in two blocks in Nanganallur in Survey No.85/3 & 4, Thalakananchery Village, Alandur Taluk, Kancheepuram District. After completing the first block, for various reasons the petitioner hit a road block and was unable to proceed with the construction after laying the foundation and basement in the Second block. Under these circumstances, a fresh tripartite agreement dated 12.03.2012 was signed with the owner of the Land, the petitioner and a new builder by named Nithya Flat. The petitioner relinquished rights over the said property and allowed the third party i.e, Nithya Flats to take over the construction on as is where is basis from the basement in terms of the approval for application in the said property.

8. This Tripartite agreement dated 12.03.2012 was signed during Financial year 2011-12 and coincited with the Assessment year 2012-2013. The petitioner had valued the opening stock of the property as Rs.2,13,58,158/- and a sum of Rs.1,63,58,154/- was written off. The petitioner also relinquished its rights in favour of the said third party and the petitioner also agreed to

receive two flats in schedule D under consideration by the third party inconsideration for relinguishing its rights in schedule A to C property.

9.The learned counsel for the petitioner submits that the assessment orders which came to be passed on 23.03.2015 clearly records that the case was discussed with authorized representative of the petitioner with reference to the difference in the value of the opening stock of the current year with the closing stock during the previous year and the assessment was completed after accepting the total income arrived by the petitioner for determing its tax liability.

10.The learned counsel for the petitioner therefore submits that there is no case made out of reopening of the assessment merely because there was a change in the opinion. It is submitted that since the impugned notice for reopening of the assessment was based on change of opinion, it was sustainable in the light of the decision of the Hon'ble Supreme Court cited supra. He therefore prays for allowing the writ petition.

11.Defending the impugned order, the learned counsel for the respondent submits that the Tripartite agreement dated 12.03.2012 not only deals with relinquishment of the rights over the property to an extent of 14,958.66 sq.ft. Out of 30.056.40, but also talks about the consideration paid to the petitioner by way of allotment of two flats of varied size and description in schedule D.

12.It is submitted that these were not brought to the notice of the Assessing officer by the petitioner and therefore the invocation of Section 148 for the purpose of reopening the assessment under Section 147 of the Income Tax Act was valid.

13. The learned Counsel for the respondent relys on the following decision of the Court.

> "(i).Kalyanji Mavji & Co.Vs Commissioner of Income-tax in Civil Appeal No.522 of 1971 reported in [1976] 102 ITR 287 (SC).
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> (ii).Phool Chand Bajrang Lal Vs. Income Tax Officer in Civil Appeal No.1235 of 1977 reported in [1993] 69 Taxman 627 (SC).
>
> (iii).Raymond Woollen Mills Ltd. Vs. Income Tax Officer in Civil Appeal Nos.1972 & 1973 of 1992 reported in [1999] 236 ITR 34 (SC).
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> (iv).Asst. Commissioner of Income-tax, Company Circle-I(1) Vs. Appollo Hospitals

Enterprises Ltd. reported in [2008] 171 Taxman 397 (Madras).

(v).Jayaram Paper Mills Ltd. Vs. Commissioner of Income Tax, Chennai in W.P. No.20258 of 2009 reported in [2010] 191 Taxman 38 (Madras).

(vi).Girilal & Co Vs. Income Tax Officer, Mumbai, in Civil Appeal No.4735 of 2008 reported in [2016] 75 Taxman.com 172 (SC).

(vii) Mohan Ravi Vs. Income Tax Officer Non-Co-operate Ward 20(5), Chennai in W.A. Nos.3321 to 3324, 3327 & 3328 of 2019 in CMP Nos.21333, 21334, 21336 to 21339, 21342, 21344, 21346, 21356 & 21358 of 2019 reported in [2019] 75 Taxman.com 373 (Madras)."

14. I have considered the arguments advanced by the learned counsel for the petitioner and the respondent. I have also perused the impugned notices

dated 16.10.2015 and the impugned order dated 18.6.2018. Earlier an assessment order dated 30.12.2016 came to be passed without passing a speaking order and was therefore impugned in W.P.No. 1019 of 2017.

15. The said writ petition was allowed by way of remand by directing the respondent to pass a speaking order and thus the impugned order dated 18.6.2018 has been passed by the respondent.

16.The impugned Notice dated 16.10.2015 issued by the respondent was within the period of four years from the last date of the assessment year 2012-13. In the returns filed for the assessment year 2012-13, the petitioner had declared the value of Stock in process as Rs.5,99,20,249/- and a sum of Rs.1,56,14,265/- towards expense.

17. This according to respondent the Income Tax Department had not been substantiated by the petitioner when the assessment order was passed on 23.03.2015. This was the reason also the reasons communicated to the petitioner by the respondent on 5.2.2016 pursuant to the impugned Notice dated 16.10.2015. It is noticed that even in the reply given to the notice pursuant to the communication of the reasons for reopening the assessment also, the petitioner has not clearly explained as to how the value of inventory was reduced while computing the income.

18. According to the petitioner, during the financial year 2011-12 a Tripartite agreement dated 12.3.2012 was signed with the landlord and the new developer namely Nithya Flats wherein the petitioner had agreed to give up all the rights over the construction in favour of the said Nithya Flats in lieu of assignments of rights over two flats as in schedule D by separate sale deed in favour of the petitioner or its nominee measuring a total extent of 2157 ft². According to the petitioner's pursuant to the above, the petitioner subsequently, realised an estimated sum of Rs. 54,77, 848/- during the subsequent financial year and paid tax.

19. In the reply dated 26.3.2016 to the impugned notice dated 16.10.2015, the petitioner has not explained clearly as to why the reopening of the assessment on account of wrongful reduction inventory for a sum of Rs.1,56,14,265/- and further amount totalling to Rs. 1,63,58,148/- from the value of the stock in trade was not correct. Therefore, I do not find any merits in the writ petition. These are better left to be decided by the authorities in the hierarchy prescribed under the Income Tax Act, 1961.

20. In the reply, the petitioner has merely stated that the assessment was completed under section 143(3) read with section 147 of theIncome Tax Act, 1961 after a scrutiny of the entire books of account, bank statement, reconciliation of Form 26 AS with profit and loss account of the petitioner. The argument of the petitioner that the reasons for reopening of the assessment was purely on account of change of opinion therefore reopening of the completed assessment liable to be quashed cannot be quashed at this stage.

21.In the impugned speaking order dated 18.6.2018, the respondent has justified the issue of notice. In the reasons given for reopening the assessment, it is stated that the issue of reduction in respect of inventory was not considered during the course of scrutiny proceeding.

22.It is further stated that the Tripartite agreement dated 12.3.2012 and the financial submitted by the petitioner are itself tangible materials for reopening of the assessment and there was no change of opinion by the assessing officer.

23.The impugned order further states that the assessment were scrutinised to find out the difference between the opening stock of the current year with the closing stock of the previous year and the details and evidence were called for were restricted to that issue only and that the issue relating to reduction in the value of inventory was not considered during the course of scrutiny and therefore the notice has been issued to reopen the assessment.

24. I find substantial merits in the submission of the

learned counsel for the respondent. The assessment is driven based on the returns filed by an assessee and therefore it is for the assessee to make correct computation of income for the purpose of payment of income tax. If there is any irregular claim for deduction/exemption, the respondent assessing officer is well within his rights to reopen the assessment as long as which reopening of the assessment is not on account of any change of opinion as has been held by the Honourable Supreme Court has followed by all the High Courts.

25. It cannot be stated that the impugned notice has been issued merely on account of change of opinion. Further, the petitioner has also not clearly explained how a reduction in the value of inventory was made at the time of filing of the returns. In these proceedings, the petitioner is hiding behind the cloak of the few ratios of the Court which may not be applicable to the facts of the case. Therefore, In my view, the respondent Income tax Department was justified in reopening the assessment under section 148 of the Income Tax Act, 1961. It is still open to the petitioner to substantiate its defence before the respondent by filing suitable reply and explain how the computation of the income was made for the purpose of payment of tax and thus, the taxable income was correctly determined.

26. Therefore, I am inclined to dismiss this writ petition. I however give liberty to the petitioner to participate in the proceedings pending before the respondent. The petitioner may therefore file additional reply, if any, within a period of 30 days from date of receipt of copy of this order before the respondent explaining its stand. The respondent is directed to examine the issue a fresh and pass an assessment orders on merits in accordance with law within a period of 90 days from the date of receipt of copy of this order.

27.The respondent is directed to pass appropriate orders on merit uninfluenced by any observations contained herein touching on merits of the case.

28. This Writ petition stands dismissed with the above observation. No cost. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Lbm

To:

Income Tax Officer,
Corporate Ward 2(3),
Room No.504, Wanaparthy Block, 5th Floor,
121, Mahatma Gandhi Road, Nungambakkam,
Chennai 600 034.

+1cc to Mr.Arun Karthik Mohan, Advocate, S.R.No. 23272
+1cc to Mr.Hema Muralikrishnan, Advocate, S.R.No. 23073

W.P.No.15698 of 2018

VBM(CO)
GN(06/07/2021)