IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.No.17262 of 2021
and WMP Nos.18277 ad 18280 of 2021

Pandiyan Paper Company
Old No.132-A, New No.298,
1st Agraharam, Salem – 636 001
rep. by its Partner …Petitioner

Vs

The Income Tax Officer,
Ward – 1 (1),
Income Tax Office,
No.3, Gandhi Road, Salem – 636 007. … Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari calling for the records of the respondent dated 30.03.2021 in DIN:ITBA/AST/S/148/2020-21/1031908779 (1) issued under sec.148 of the Income Tax Act for the assessment year 2014-15 in PAN: AAGFP4598J and quash the same.

For Petitioner : Mr.T.Vasudevan

For Respondent : Mr.ANR.Jayaprathap
Junior Standing Counsel

O R D E R

Heard Mr.T.Vasudevan, learned counsel for the petitioner and Mr.ANR.Jayaprathap, learned Junior Standing Counsel who accepts notice for the respondent and is armed with instructions to proceed with the matter finally.

2. The petitioner assails a notice issued under Section 148 of the Income Tax Act, 1961 (in short 'Act') dated

30.03.2021 on the ground that the condition precedent for re-opening of an assessment under Section 147 of the Act is not satisfied in the present case.

3. Learned counsel for the petitioner draws my attention to the fact that an order of assessment under Section 143(3) had been passed at the original instance and thus the proviso to Section 147 would stand attracted and would have to be satisfied. The proviso casts responsibility upon the Department to establish that the escapement of income alleged has been occasioned by virtue of the assessee not having made a full and true disclosure of its taxable income in its return of income/in the course of original assessment.

4. He also draws my attention to the reasons recorded, communicated on 09.07.2021, wherein, in both the points cited as being the basis for the impugned re-assessment, reference is made to verification of the records of assessment including Form 3CD of the audit report. Thus, and prima facie, the documents relied upon in support of proceedings for re-assessment are very much part of the records. According to the petitioner, there is no other, let alone tangible material, that has been discerned to justify the impugned proceedings.

5. However, as the petitioner has, and rightly, filed an objection to the assumption of jurisdiction before the Assessing Authority and orders are awaited in regard to the same, it would be appropriate that the procedure for re-assessments, as set out by the Hon'ble Supreme Court in the case of GKN Drive Shafts V. ITO (259 ITR 19) is complied with.

6. In conclusion of the judgment, the Bench states as follows:

> We see no justifiable reason to interfere with the order under challenge. However, we clarify that when a notice under Section 148 of the Income tax Act is issued, the proper course of action for the noticee is to file return and if he so desires, to seek reasons for issuing notices. The assessing officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the noticee is entitled to file objections to issuance of notice and the assessing officer is

bound to dispose of the same by passing a speaking order'.

7. Since the impugned proceedings are yet to culminate in a speaking order on the aspect of jurisdiction, I am of the view that this Writ Petition is pre-mature and that the petitioner should await passing of the speaking order. Let the respondent hear the petitioner and pass orders on the objections dated 12.07.2021 within a period of four (4) weeks from today. Assessment, if any, will be taken up subject to conclusion on the aspect of jurisdiction.

8. This Writ Petition is dismissed. No costs. Connected Miscellaneous Petitions are also dismissed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To

The Income Tax Officer,
Ward – 1 (1),
Income Tax Office,
No.3, Gandhi Road, Salem – 636 007.

+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.41703

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PMK(CO)
SB(05/10/2021)