IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2021

CORAM

THE HONOURABLE MR.JUSTICE R. MAHADEVAN
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

WRIT APPEAL NOS.2471 & 2472 OF 2021
AND
CMP.NOS.15941 & 15944 OF 2021

M/s. Pentamedia Graphics Limited
Rep. by its Whole Time Director
Mr.V.Venkataraman
T2, III Floor, Nutech Plaza
73, Arcot Road, Kodambakkam
Chennai – 600 024 ...Appellant in both WAs

(The Cause title accepted vide Court order dated 06.09.2021 made in CMP Nos.13695 & 13696 of 2021 in W.A.SR.NOS.71508 & 71507 OF 2021)

Versus

The Deputy Commissioner of Income Tax
Media Circle – I
Room No.311, New Block III, 3rd Floor
No.121, Mahatma Gandhi Road
Nungambakkam
Chennai – 600 034 ...Respondent in both WAs

Writ Appeals filed under Clause 15 of Letters Patent against the common order dated 20.07.2021 made in W.P. Nos. 34985 and 34986 of 2012.

Prayer in W.P.No.34985 of 2012 : Writ petition filed under Article 226 of the Constitution of India to issue of Writ of Certiorari, Calling for the records in DCIT/Media Circle-1/148/2012-2013 dated 13.12.2012, relating to Assessment Year 2005-06 and quash the same.

Prayer in W.P.No.34986 of 2012 : Writ petition filed under Article 226 of the Constitution of India to issue of Writ of Certiorari, Calling for the records in DCIT/Media Circle-1/148/2012-2013 dated 13.12.2012, relating to Assessment Year 2006-07 and quash the same.

For Appellant : Mr.G.Baskar in both WAs

For Respondent : Mr.Prabhu Mukunth Arunkumar, Senior Standing Counsel in both WAs

COMMON JUDGMENT

(Judgment of this Court was delivered by R. MAHADEVAN, J.)

Heard Mr.G.Baskar, learned counsel for the appellant and Mr.Prabhu Mukunth Arunkumar, learned senior standing counsel appearing for the respondent.

2.Both the writ appeals arise from the common order dated 20.07.2021 passed by the learned single judge in W.P. Nos. 34985 and 34986 of 2012, wherein, the grounds raised by the appellant / assessee challenging the re-opening of assessment for the years 2005-06 and 2006-07, were rejected and the appellant was granted liberty to file appeals against the orders of reassessment.

3.The relevant facts leading to the filing of the present writ appeals would run thus:

3.1 The appellant is engaged in the business of development of computer software and exports of the same out of India. According to the appellant, in respect of the income generated out of such export business, they are eligible for exemption in terms of Section 10 B of the Income Tax Act. The Assessee therefore, filed their returns for the assessment years in question, declaring their total income and claimed exemption in respect of the income derived out of the export of computer software. On the basis of the returns filed by the appellant, an intimation under Section 143 (1) of the Act was issued, pursuant to which they appeared and submitted their explanations to the Assessing Officer. After conducting enquiry, the assessment was ultimately completed on 28.12.2007 and 26.12.2008 determining the total income at Rs.23,94,79,546/- and Rs.3,39,19,136/- and raising a demand of Rs.11,61,15,813/- and Rs.1,51,84,851/- in respect of the respective assessment years 2005-06 and 2006-07 and restricted the relief claimed by the appellant under Section 10B.

3.2 Aggrieved by the orders of assessment, the appellant filed appeals before the Appellate Authority, which were disposed of on 22.09.2010 and 29.09.2010. Challenging the same, the appellant went on further appeals before the Income Tax Appellate Tribunal, which are pending adjudication.

3.3 While so, the appellant received notices dated 28.03.2012 under Section 148 of the Income Tax Act for re-opening the assessment on the ground that certain income generated by the appellant has been escaped from the purview of assessment. The appellant filed its objections to the same on 04.12.2012, which were rejected by orders dated 13.12.2012. The said orders were challenged in the writ petitions viz., WP.Nos.34985 and 34986 of 2012, which were disposed of by orders impugned herein. Therefore, the present writ appeals by the appellant / assessee.

4.On a perusal of the records placed before us, we find that in the writ petitions viz., WP.Nos.34985 and 34986 of 2012, the appellant has challenged the orders dated 13.12.2012 passed by the respondent, rejecting the objections filed by them to the notices issued under section 148. However, during the pendency of the same, the respondent passed the re-assessment orders on 21.10.2014 under section 143(3) r/w 147, which according to the appellant, are barred by limitation as prescribed in the Explanation 1 to section 153(2) of the Act. Feeling aggrieved, the appellant filed WP Nos.28836 and 28837 of 2014 to quash the reassessment orders, which were ultimately dismissed by the learned Judge, by order dated 20.07.2021. The said order was put to challenge by the appellant by filing separate appeals viz., WA.Nos.2527 and 2528 of 2021.

5.Such being the present scenario, we need not go into the impugned order dated 20.07.2021 passed in WP.Nos.34985 and 34986 of 2012, as the issues involved herein got merged with the subsequent reassessment orders. Therefore, we are inclined to dismiss the present writ appeals, however, leaving it open to the appellant to raise all the grounds available to them in the appeals viz., WA.Nos.2527 and 2528 of 2021.

6.With the aforesaid observation, both the writ appeals are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VIII)

// True Copy //

Sub Assistant Registrar

av/rsh

To

The Deputy Commissioner of Income Tax
Media Circle – I
Room No.311, New Block III, 3rd Floor
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Chennai – 600 034.

+2ccs to M/s.Hema Muralikrishnan, Advocate, S.R.No.67265, 67266

+2ccs to M/s.G.Baskar, Advocate, S.R.No.67256

W.A.Nos. 2471 & 2472/2021

RP(CO)
RVM(28/03/2022)