IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.Nos.42729 & 42730 of 2016
and W.M.P.Nos.36656 & 36657 of 2016

M/s.Doshi Housing,
No.3-H, Century Plaza
No.560, Anna Salai,
Chennai 600 018 ...Petitioner in both W.Ps.

Vs.

1.The Principal Commissioner of Income Tax,
Chennai 5,
Wanapathy Block, 5th Floor,
Income Tax Department,
121, Nungambakkam High Road, Chennai 600 034.

2.The Additional Commissioner of Income Tax,
Non Corporate Ward - 3,
Room No.622, Main Building,
Income Tax Department,
121, Nungambakkam High Road,
Chennai 600 034.

3.The Income Tax Officer,
Non Corporate Ward - 3(2),
Wanapathy Block, Room No.623C, 6th Floor,
Income Tax Department,
121, Nungambakkam High Road,
Chennai 600 034. ...Respondents in both W.Ps.

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the third respondent to quash the impugned notice dated 31.03.2016 in PAN: AAFFD6620A issued in terms of Section 148 of the Income Tax Act, 1961 on the assumption of jurisdiction u/s 147 of the said Income Tax Act, 1961 for framing re-assessment in relation to the Assessment Years 2009-10 and 2010-11 in the light of the interim orders dated 21.11.2016 in PAN: AAFFD6620A/AY 2010-11 and PAN: AAFD6620A/AY 2009-10 respectively and further direct the third respondent to drop the proceedings initiated under Section 147 of the Act for the said assessment years 2009-10 and 2010-11 respectively.

(In both W.Ps.)

For Petitioner : Mr.S.Sridhar

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

COMMON ORDER

The notice issued under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for reopening of assessment by invoking Section 147 of the Act is under challenge in these two Writ Petitions with reference to two separate Assessment Years. The 1st Writ Petition in W.P.No.42729 of 2016 is with reference to the Assessment Year 2009-10 and W.P.No.42730 of 2016 is relating to the Assessment Year 2010-11. The facts and circumstances in both the Writ Petitions are similar and thus, this Court is inclined to pass a common order.

2.The petitioner is a Partnership Firm, incorporated in the year 2005 under the Partnership Deed dated 16.08.,2005 with the main object to carry on the business in real estate and such other activities described in the Partnership Deed. The petitioner filed their Return of Income for the respective Assessment Years 2009-10 and 2010-11. It is an admitted fact that the Assessing Authority scrutinized the returns of income and passed final order of assessment on 30.12.2011 in respect of the Assessment Year 2009-10 and on 28.03.2013 with reference to the Assessment Year 2010-11. The 3rd respondent issued notice under Section 148 of the Act on 31.03.2016 in respect of the said two Assessment Years and for the purpose of reopening of the assessment by invoking Section 147 of the Act. Admittedly, the petitioner raised an objection and requested for reasons for reopening of assessment. On 04.05.2016, the respondents requested the petitioner to submit Return of Income. The petitioner responded the same and thereafter, the reasons for reopening of assessment was furnished in proceedings dated 18.07.2016. The petitioner submitted its objection with details and by raising grounds and thus, the objections were disposed of by the 3rd respondent in proceedings dated 21.11.2016.

3.The learned counsel appearing for the petitioner solicited the attention of this Court with reference to the original assessment orders passed in respect of two Assessment Years on 30.12.2011 and contended that the details regarding the reasons furnished on initiation of Section 147 proceedings were adjudicated and considered by the Assessing Authority while passing the original assessment order. All those particulars are made available in the assessment orders dated 30.12.2011 and 28.03.2013 regarding the Assessment Years 2009-10 and 2010-11 respectively. When there was an adjudication in entirety with reference to the informations, materials and books of accounts and the taxes produced by the petitioner/assessee, the very same particulars were furnished as reasons for reopening of assessment and therefore, the reopening of assessment is nothing but change of opinion and not falling within the ambit and scope of Section 147 of the Act. It is contended that the reopening is done beyond the period of four years, however, within a period of six years. Thus, the ingredients contemplated in the proviso clause to Section 147 of the Act is to be adhered to in its strict sense. The respondents have not found any tangible material or other wise and there was no suppression of fact on the part of the petitioner and the details and particulars furnished by the petitioner were scrutinized and considered in the original assessment orders. Thus, the reopening of proceeding initiated by invoking Section 147 of the Act beyond the period of four years is untenable and the conditions contemplated in the proviso clause has not been complied with and thus, the Writ Petitions are to be allowed.

4.The petitioner relied upon the details of reasons furnished by the respondents for reopening of the assessment. The income of the petitioner firm to the extent of Rs.3,58,74,171/- being the share of profit derived by Shri V.G.Surendranath for the Assessment Year 2009-10 has escaped assessment within the meaning of Section 147. The claim of deduction under Section 80IB(10) is found untenable and excessive to the extent of Rs.3,58,74,174/- and hence, the deduction requires restriction to the amount of eligible quantum. The assessment of the petitioner firm has been reopened under Section 147 of the Act. With reference to the said reasonings furnished for reopening of the assessment, the learned counsel for the petitioner referred the Return of Income, wherein the petitioner has stated the net profit transferred to partners capital accounts and the other details regarding the accounts. The petitioner made an attempt to state that the reasonings now raised were already adjudicated and considered by the Assessing Officer and the final assessment order was passed. Thus, raising the same reasons are nothing but change of opinion. The learned counsel appearing for the petitioner referred to the objections raised in this regard in their letter dated 16.08.2016. In their objections, the petitioner has categorically explained these aspects before the respondents. Specifically, it is contended by the petitioners that "the transaction with Coromandal Cables Private Limited does not involve any expenditure incurred by the assessee and hence, there is no requirement to report the said transaction in Column 18 of Form 3CD. The transaction between the assessee/the partnership firm and the company/CCPL was wrongly considered as related party transaction within the scope of the specified persons in Section 40A(2)(b) of the Act. The misconstruction of the provisions of Section 40A(2)(b) of the Act would vitiate the entire attempt to frame the re-assessment so as to overcome the prohibition contemplated in the proviso below Section 147 of the Act.” The said objections were also not considered. Thus, the impugned order disposing of the objections is bad in law and the authorities have not considered the objections in a meaningful manner.

5.This Court is of the considered opinion that the procedures contemplated were followed by the respondents on initiation of reopening proceedings by invoking Section 147 of the Act. The notice under Section 148 of the Act was issued on 31.03.2016. The petitioner responded to the notice. At the request of the petitioner, reasons were furnished. The reasons furnished by the 3rd respondent are elaborate and the petitioner also submitted further objections regarding the reasons furnished and then, objections were also disposed of by the 3rd respondent.

6.This Court has to consider the findings given in the order of disposal passed by the 3rd respondent in proceeding dated 21.11.2016. This Court has to consider whether the 3rd respondent has considered the objections in a meaningful manner or not. Certain intricacies of the transaction of the accounts cannot be gone into by the High Court in a writ proceedings under Article 226 of the Constitution of India. What is required is to scrutinize the reasons and sufficiency of the reasons need not be gone into by the High Court in a writ proceedings where the assessment is sought to be reopened by invoking Section 147 of the Act. Thus, sufficiency of the reasons cannot be gone into in a writ proceedings. The High Court cannot conduct a roving enquiry in respect of the accounts details as well as the technicalities involved in respect of the transactions. All those aspects are to be considered by the Assessing Officer while passing the final order of re-assessment. However, the High Court has to find out whether the reasons furnished for reopening of assessment amounts to change of opinion or not. In this regard, it is useful to extract reasons furnished by the 3rd respondent while disposing of the objections submitted by the writ petitioner which reads as under:

> “6.17. Hence, it is substantiated that the reassessment proceedings have been initiated based on clear reasons to reopen and not a mere change of opinion.
>
> 7. The assessee firm finally contends that the transactions between the company and the assessee firm are not covered u/s.40A(2)(b). This

contention is totally baseless. The son of the Managing Director of the company which owns the land is the substantial stake holder in the assessee firm. The transactions between the assessee firm and company are so arranged that the entire sale proceeds of UDS of land and building is received by the firm and a portion is thereafter parted to the company, apart from the amount diverted through the partner Shri M.G.Surendranath as share of profit from the firm. When the transactions are undertaken between these related enterprises, it is madndatory that the nature and characteristics of the transactions requires to be furnished in Form No.3CD. Colum No.18 emphasizes on the phrase 'Particulars of payments made to persons specified u/s.40A(2)(b)' and does not specify that such payments should be expenditure. A payment may be of revenue in nature or capital in nature. It may or may not get debited to the Profit and Loss Account. However, when there are transactions between related parties, it is the duty of the Auditor to report the same. Having failed to do so, as stated earlier, the Assessing Officer was constrained to probe further into the correctness of quantum of deduction.

8. It is once again reiterated that fresh tangible material had come into the possession of the undersigned through the order of the Hon'ble ITAT, which is in public domain. The Assessing Officer had omitted to examine as to whether the related party transaction remain at arm's length while concluding the original assessment. There was no deliberation on this aspect and hence, failure to undertake proper enquiry resulted in excessive and unreasonable deduction to the assessee firm. The same requires correction and therefore, this reassessment proceedings is justified. Therefore, the request of the assessee firm to drop the reassessment proceedings is summarily rejected."

7.Perusal of the above findings of the 3rd respondent would be sufficient to hold that the requirements of Section 147 of the Act has been complied with and the initiation of reopening proceedings is well within the provisions of the Act and therefore, the respondents are at liberty to proceed with re-assessment by following the procedures and by affording opportunity to the writ petitioner/assessee, as contemplated.

The respondents are directed to complete the said exercise of completion of the re-assessment proceedings within a period of four months from the date of receipt of a copy of this order.

8.With these directions, both these Writ Petitions stand dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

gsa

To

1.The Principal Commissioner of Income Tax,
Chennai 5,
Wanapathy Block, 5th Floor,
Income Tax Department,
121, Nungambakkam High Road,
Chennai 600 034.

2.The Additional Commissioner of Income Tax,
Non Corporate Ward - 3,
Room No.622, Main Building,
Income Tax Department,
121, Nungambakkam High Road,
Chennai 600 034.

3.The Income Tax Officer,
Non Corporate Ward - 3(2),
Wanapathy Block, Room No.623C, 6th Floor,
Income Tax Department,
121, Nungambakkam High Road,
Chennai 600 034.

+1CC to Mrs.Hema Murali Krishnan Advocate SR No.28689

W.P.Nos.42729 & 42730 of 2016

PCH (CO)
PR (16/07/2021)