IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.06.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.10855 of 2014

and

M.P.No.1 of 2014

M/s.Aban Offshore Ltd.,
Represented by its Vice President-Finance,
Mr.Vijay Saheta,
113, Janpriya Crest,
Pantheon Road, Egmore,
Chennai-600 008. ...Petitioner

- Vs -

The Deputy Commissioner of Income Tax,
Company Circle I (1),
VI Floor, New Block,
No.121, Mahatma Gandhi Road,
Nungambakkam,
Chennai-600 034. ...Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records in GIR/PAN AX-2017 AAACA3012H dated 21.03.2014 relating to the Assessment Year 2006-07 on the file of the Respondent, quash the same with costs.

For Petitioner : Mr.G.Baskar

For Respondent : Mrs.Hema Muralikrishnan
Senior Standing Counsel for Income Tax

O R D E R

The assessment order dated 21.03.2014 passed under Section 144 read with Section 147 of Income Tax Act, 1961 with reference to the assessment year 2006-07 is under challenge in the present Writ Petition.

2. The petitioner is the company, engaged in the business of provision of oil field services to various oil majors for off shore exploration and production of hydrocarbons in India and abroad. The petitioner renders drilling services to oil majors including Oil and Natural Gas Corporation Ltd., and others. In addition, the petitioner is engaged in infrastructure development and operates wind mills for the generation and distribution of power.

3. The petitioner filed Return of income for the Assessment Year 2006-07 on 11.09.2006. The Return was processed under Section 143(1) and selected for scrutiny by issue of notice under Section 143(2) of the Act dated 04.10.2007. The petitioner appeared before the Assessing Authority and furnished all details sought for. The Assessing Authority completed the process and passed an order of assessment on 30.12.2008 under Section 143(3) of the Act. Subsequently, the re-opening proceedings were initiated under Section 147 of the Act and a notice under Section 148 was issued on 30.03.2013. The petitioner responded to the notice in letter dated 15.04.2013 and the reasons for re-opening of assessment for the said assessment year was passed on 10.02.2014. The petitioner submitted their objections for reopening of the assessment and the said objections were rejected and thereafter, an order of assessment was passed in the impugned proceedings dated 21.03.2014 under Section 144 read with Section 147 of the Act.

4. The learned counsel for the petitioner strenuously contended that the reason for reopening itself is absurd and not in consonance with the ingredients contemplated under Section 147 itself. The reasons furnished is that the assessee has not furnished any TRC Certificate during the scrutiny proceedings of the Assessment Year 2006-07. However, such a Certificate during the relevant point of time were not required to be produced under law. The amended provisions of the Income Tax Act sought to be applied with retrospective effect by insisting the petitioner to produce the Certificate by reopening the assessment proceedings, which is impermissible and in violation of the principles of law. Thus, the very reason for reopening of assessment is not only untenable and the final order of reassessment is to be set aside on the said ground.

5. The learned counsel for the petitioner made a reference regarding the reasons furnished in proceedings dated 10.02.2014 and compared with the objections raised by the petitioner in letter dated 15.04.2013. The petitioner has categorically explained that the amendment made for production of the TRC Certificate is prospective and therefore, the very reason for reopening of assessment is untenable. However, the Assessing

Officer without providing any opportunity, hurriedly proceeded with the assessment and passed an impugned order. Thus, the petitioner is constrained to file the present writ petition.

6. The learned counsel for the petitioner is of an opinion that when there is a patent irregularity or illegality in the matter of reopening of assessment, preferring an appeal is a choice and the High Court is empowered to entertain a writ petition on the ground of patent illegality and in the cases, wherein principles of natural justice had been violated. In this regard, the petitioner cited the judgment of the Apex Court and Bombay High Court as well as the Madras High Court and the details of the case laws are extracted as under:

In the case of GKN Driveshafts (India) Ltd.., Vs. ITO - SC - 259 ITR 19, Procedure for reopening of assessments under Section 147 has elaborated by the Apex Court. In the case of Fisher Xomox Sanmar India Ltd., Vs. ACIT - Mad - 271 ITR 393, Madras High Court held that on request from assessee, reasons for reopening must be furnished within a reasonable period of time. Inordinate delay on behalf of the Assessing Officer cannot be approved off, as it is not the intention of the Apex Court. The petitioner further referred the cases of Asian Paints Ltd., Vs.DCIT-Bom-296 ITR 90, wherein the Court and in the case of Smt.Kamala Ojha Vs. ITO-Bom-88 taxmann.com 468, the Bombay High Court held that there should be a minimum gap of 4 weeks between the disposal of the objections on the reopening and the passing of the re-assessment order. Undue haste in passing the order of reassessment without giving sufficient time to the assessee to challenge the order rejecting objections is an attempt to overreach the court and to thwart the petitioner's challenge to the order rejecting preliminary objections. In the case of CCIT Vs. Prashanth M.Timbolo - SC - 103 CCH 0195 - Bom-414 ITR 0507, the Court held that when there is no requirement in law to provide TRC at the time of completion of original assessment, subsequent enactment of the same cannot be a reason for reopening.

7. Relying on the said judgments, the learned counsel for the petitioner has emphasized that when production of certain certificate is not mandatory and applying the subsequent amendment with retrospective effect by reopening the assessment is not only bad in law, shows the non-application of mind on the part of the respondent. Thus, the writ petition is to be allowed.

8. The learned Senior Standing Counsel appearing on behalf of the respondent objected the contentions raised on behalf of the learned counsel for the petitioner in entirety by stating that it is not as if the respondent has not given any opportunity to the petitioner. The procedures contemplated under

the statute and the precedent laid down by the Apex Court are scrupulously followed in the case of the petitioner. The petitioner was provided with an opportunity to participate in all the proceedings and he sought for an adjournment on more than one occasion and thereafter, not turned down for participation. Thus, the petitioner is not entitled for any relief as such sought for in this writ petition.

9. The learned Senior Standing Counsel solicited the attention of this Court with reference to the reasoning given for reopening assessment proceedings dated 10.02.2014 and made a submission that this is the case not only reopened on the basis of the non-production of TRC Certificate. The other reasons are also elaborated in the proceedings dated 10.02.2014 and therefore, the reasons furnished are convincing and based on the reasonings, the Assessing Authority passed the final order on 21.03.2014. Under these circumstances, the petitioner if at all aggrieved, has to approach the Appellate Authority under the provisions of the Act and admittedly, the petitioner has not exhausted the appellate remedy as contemplated under the Act and thus, this writ petition is liable to be rejected.

10. This Court is of the considered opinion that an attempt is made by the petitioner to set aside the original Assessment Order on the ground that there was violation of principles of natural justice and the TRC Certificate is not necessary with reference to the Assessment Year 2006-07. This Court is of the considered opinion that the reasons furnished for reopening of assessment in proceedings dated 10.02.2014 reveals that beyond the production of TRC Certificate there are other aspects, which requires an adjudication, which was done by the Assessing Officer and the final order of Assessment was passed in the impugned proceedings dated 21.03.2014.

11. Even in case of violation of principles of natural justice, in all circumstances such cases need not be entertained by the High Court under Article 226 of the Constitution of India by dispensing with the appellate provisions contemplated under the statute. Undoubtedly, every writ petition is filed on one or the other ground, more specifically, violation of the principles of natural justice, discrimination, equality of law or otherwise in violation of statutory provisions. On all these grounds, if the appeal provision is dispensed with, then the High Court is diluting the importance of the appellate provisions contemplated under the Act.

12. Filing an appeal is the Rule. Entertaining a writ petition is an exception. Dispensing with an appeal is an exceptional one, wherein, the High Court could be able to form an opinion that there is an imminent threat or damage, which

cannot be compensated or gross injustice, warranting an urgent relief but not otherwise. Therefore, filing of an appeal may be dispensed with by the High Court, only if the urgency and imminency is established and in all other circumstances, the aggrieved persons shall prefer an appeal for the purpose of redressing their grievances by following the procedures contemplated.

13. The Appellate Authorities are the final fact finding Authority. The Appellate Authority are empowered to call for the original records, re-adjudicate the facts and rectify the omissions and commissions and errors, if any committed by the original Authority. Such an adjudication is a paramount importance for the High Court to exercise the power of review under Article 226 of the Constitution of India. The power of review under Article 226 of the Constitution of India is limited and the High Court is empowered to scrutinize the procedures and reasons for arriving a decision by an Authority by following the procedures contemplated under the Statute but not in the decision itself. Thus, the importance attached to the appellate remedy at no point of time can be undermined by the higher Courts. The finding of the Appellate Authority would provide a valuable assistance for the High Court to exercise the power of judicial review under Article 226 of the Constitution of India effectively and efficiently. Therefore, the legislative intention to redress the grievances by providing an appeal at no point can be thwarted by the High Court. The institutional hierarchy and its respect sought to be not only be protected, the High Court is not expected to usurp the powers of the Appellate Authority by venturing into the fact finding aspects with reference to mixed question of fact and law. The Appellate Authority would be the best persons to appreciate the documents and evidences as they are possessing an expertise in the field of Income Tax in the present case. Therefore, this Court is of the opinion that in all circumstances, the parties aggrieved have to approach the Appellate Authority even in respect of violation of the statutory provisions and violations of the principles of natural justice or otherwise with reference to the facts and circumstances.

14. This being the principles to be followed, this Court is of the considered opinion that the legal grounds as well as the factual discrepancies, which all are disputed, shall be adjudicated by the Appellate Authority and the petitioner is at liberty to approach the Appellate Authority by following the procedures contemplated and in the event of preferring any such appeal, the Appellate Authority shall entertain the appeal without reference to the delay and adjudicate the same on merits in accordance with law by affording an opportunity to the writ petitioner and dispose of the same as expeditiously as possible.

15. With these directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssn

To

The Deputy Commissioner of Income Tax,
Company Circle I (1), VI Floor, New Block,
No.121, Mahatma Gandhi Road,
Nungambakkam,
Chennai-600 034.

+1cc to Mr.G. Baskar, Advocate,Sr.28687.
+1cc to M/s.Hema Muralikrishnan,Advocate,Sr.28692.

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