IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	24.02.2021
Pronounced On	27.05.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.43525 of 2016
and
W.M.P.No.37351 of 2016

B.Sharada Reddy ... Petitioner

Vs

Income Tax Officer,
Non Corporate Ward 20(5),
Room No.315, Wanaparthy Block,
III Floor, 121 MG Road,
Nungambakkam, Chennai - 600 034. ... Respondent

Prayer:
Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the Respondent contained in its Proceedings dated 25.11.2016 in PAN No.AFPPR8465Q dismissing the Petitioner's objections to the reopening of income tax assessment for the assessment year 2009-10, and to quash the same as arbitrary, unjust and illegal, and to consequently forbear the Respondent from re-assessing the Petitioner's income for the assessment year 2009-10 pursuant to the notice issued under Section 148 of the Income Tax Act, 1961 dated 30.03.2016.

For Petitioner : Mr.Suhrith Parthasarathy
for Mr.Arun Karthik Mohan

For Respondent : Mrs.Hema Muralikrishnan
Senior Standing Counsel

ORDER

The petitioner has challenged the impugned communication dated 25.11.2016 overruling the objections of the petitioner against the reopening of the income tax assessment for the Assessment Year 2009-2010.

2. The petitioner was issued with a notice dated 30.03.2016 under Section 148 of the Income Tax Act, 1961 for the purpose of proviso to Section 147 of the Income Tax Act, 1961 for the Assessment Year 2009-2010. The petitioner called for the reasons for reopening the assessment as per the decision of the Hon'ble Supreme Court in G.K.N.Driveshafts (India) Ltd. v. ITO, 259 ITR 19 (SC).

3. By a communication dated 27.05.2016, the respondent/Income Tax Officer has furnished the following reasons for reopening of the income tax assessment:-

> "The assessee has purchased movie rights for Rs.15,68,00,000/- (Theatre & Negative Rights), which is a capital expenditure and depreciation to be claimed. The assessee has purchased movie rights (Theatrical & negative rights) for Rs.15,68,00,000/- and sold only satellite rights. So purchase of movie right is different issue and needs to be capitalised and 25% of depreciation only can be claimed.
>
> The assessee is selling only satellite rights retaining theatre rights. The purchase of movie rights for Rs.15,68,00,000/- is a capital expenditure and is to be shown in Balance Sheet as Assets for which only depreciation @ 25% can be claimed. Whereas, the assessee has claimed the entire amount of Rs.15,68,00,000/- as expenses and debited in the profit & loss a/c. The closing stock of Rs.1,02,26,000/- shown after selling of all movies and satellite rights. Since the income chargeable to tax has escaped assessment for such assessment year and the same is to be investigated and brought to tax."

4. The petitioner replied to the said notice by a reply dated 12.07.2016, wherein, it has been stated that the notice under Section 148 of the Income Tax Act, 1961 has been issued beyond a normal period of limitation of four years and therefore it was imperative on the part of the respondent to state how there was a reason to believe that there was a failure of true and full disclosure of materials that were required for assessment under Section 139 of the Income Tax Act, 1961. It was further submitted that reopening of the assessment was not based on any new facts, but rather is based on a supposed change of opinion of facts previously submitted by the petitioner to the respondent/predecessor and therefore merely because there is a change of opinion under Sections 147 & 148 of the Income Tax

Act, 1961 cannot be exercised by the officer to succeed the officer who passed the original order of assessment. It is further submitted that the impugned communication dated 25.11.2016 merely reiterates the reasons given by the impugned communication dated 23.05.2016 and is therefore liable to be quashed.

5. The learned counsel the petitioner referred to the following decisions:-

1. Narayanappa Vs CIT, 63 ITR 219 (SC)
2. Modi Vs ITO, 75 ITR 367
3. CIT Vs Hemachandra, 77 ITR 1
4. Gangasaran Vs ITO, 130 ITR 1
5. CIT Vs Kelvinator, 256 ITR 1
6. IPCA Laboratories Vs Gajanand, 251 ITR 416
7. Foramer Vs CIT, 247 ITR 436
8. Garden Silk VS DCIT, 237 ITR 668
9. CIT Vs Eicher Ltd., 294 ITR 310
10. CIT Vs Shree Rajasthan Syntex Ltd., 3113 ITR 231
11. Hynoup Food and Oil Industries Ltd., Vs ACIT, 307 ITR 115
12. Techspan India P. Ltd., Vs ITO, 283 ITR 212
13. Calcutta Discount Co. Ltd., Vs ITO, 41 ITR 191
14. G.K.N.Driveshafts (India) Ltd. v. ITO, 259 ITR 19
15. Garden Finance Ltd., Vs Assistant Commissioner of Income Tax, 268 ITR 48.

6. On the other hand, defending the impugned order, the learned senior standing counsel for the Revenue/Income Tax Department submits that the petitioner has not truly and fully disclose all materials that were required for assessment by the Assessing Officer. She submits that as against Col.No.8(a) of Form-3CD, the petitioner's auditor has stated “not applicable”. It is submitted that Col.No.8(a) of Form-3CD deals with “nature of business”. Similarly, it is submitted that as against the Col.No.28(a) Form-3CD, the petitioner has not furnished the quantitative details of trading time also and therefore there is purely failure on the part of the petitioner in not truly and fully disclosing all material facts, the information required for passing the assessment order.

7. The learned senior standing counsel for the respondent draws my attention to the decision of the Hon'ble Supreme Court in Raymond Woollen Mills Ltd., Vs Income-tax Officer, [1999] 236 ITR 34 (SC).

8. Heard the learned counsel for the petitioner and the learned senior standing counsel for the respondent.

9. I have also perused the documents filed by the petitioner and the reasonings given by the respondent. The assessment was completed for the Assessment Year 2009-2010 on 19.12.2011. It preceded a notice from the respondent/ predecessor. The petitioner was represented by her Chartered Accountant. By a communication dated 24.11.2011, the Chartered Accountant has given the details of income offered by the petitioner from the sale of film rights. The letter also encloses a ledger extract of income offered and requested the respondent to let the Chartered Accountant to know as to which of the transactions and which of the agreements were required. The subsequent communication also indicates that the petitioner had sold rights in various films in favour of 15 different buyers for a cumulative value of Rs.1,15,18,360/-. By another communication dated 17.12.2011, which is 2 days preceding to the original order of assessment, the Chartered Accountant of the petitioner has given a break up of the amounts received from various persons to whom rights were sold.

10. The Assessment Order that has been passed based on the above communication is bereft of the details. It reads as under:-

> "The assessee filed the return of income for the Assessment Year 2009-2010 on 29.09.2009 admitting a total income of Rs.60,12,850/-. The return was processed u/s 143(1) of the Income-tax Act, 1961 (hereinafter referred to as the Act). Subsequently, the case was selected for scrutiny through CASS and notice issued u/s.143(2) of the Act dated 23.08.2010 was issued and duly served on the assessee, posting the case for hearing on 15.09.2010. Notice u/s 142 (1) of the Act dated 11.07.2011 along with questionnaire was issued posting the case for the hearing on 04.08.2011. In response to the above notices, Shri R.Mohan, CA appeared from time to time and filed the details called for.
>
> 2. After discussion with the authorized representative and after perusal of the documents filed by the assessee the assessment is completed accepting the income returned.

3. Total income returned and accepted Rs.60,12,850/-

Tax thereon Rs.28,660/-

This should be paid as per demand notice enclosed."

11. Therefore, the question that arises for consideration in this writ petition is whether there was true and full disclosure by the petitioner at the time of assessment or whether the petitioner is entitled to state that the impugned proceedings were on account of change of opinion.

12. I have perused the records. I have also considered the submissions of the learned counsel for the petitioner and learned senior standing counsel for the respondent. Before the assessment was completed, the petitioner's auditor vide letter dated 24.11.2011 has clearly stated that the petitioner was trader of rights in films and that the petitioner has not claimed any appreciation and consequently there is no schedule for the same.

13. In the said communication, the auditor has also called upon the respondent to inform as to which of the transactions and which of the agreements were required. It is thereafter the assessment was completed under section 143 (3) on 19.12.2011.

14. Before the assessment order was passed, a personal hearing was also held on 04.08.2011. Though the assessment order has been passed by the predecessor of the respondent, it does not reveal any proper reasonings. Nevertheless, it cannot be said that the petitioner was guilty of failure to disclose truly and fully all material facts necessary for completing assessment for the assessment year 2009-2010.

15. Therefore, the impugned exercise of the respondent invoking section 148 of the Income Tax Act, 1961 for the purpose of first proviso to section 147 of the Income Tax Act, 1961 has to be held on account of change of opinion by the respondent.

16. Under these circumstances, I am of the view the impugned communication overruling the objection of the petitioner against

reopening of the assessment is liable to be quashed. Accordingly, it is quashed. This Writ petition stands allowed. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To:

The Income Tax Officer,
Non Corporate Ward 20(5),
Room No.315, Wanaparthy Block,
III Floor, 121 MG Road,
Nungambakkam, Chennai - 600 034.

+1cc to Mrs.Hema Muralikrishnan, Advocate, S.R.No.27316

W.P.No.43525 of 2016

JP-II(CO)
CS/12/08/2021