



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :26.07.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.43925 of 2016
and
W.M.P.No.37752 of 2016

M/s.Sutherland Global Services Pvt Ltd.,
Represented by its Associate
Vice President - Finance Mr.V.N.Achutarama Gupta
45A, Velachery Main Road,
Vijyanagaram, Chennai - 600 042. ...Petitioner

Vs

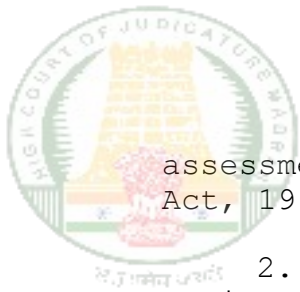
1. The Deputy Commissioner of Income Tax,
Corporate Circle 6(2)
Room No.705, 7th Floor, Wanaparthi Block,
121, Mahatma Gandhi Road, Nungambakkam,
Chennai - 600 034.
2. The Principal Commissioner of Income Tax-6,
121, Mahatma Gandhi Road,
Chennai - 600 034. ...Respondents

Prayer : Writ Petition filed Under Article 226 of the Constitution of India to issue of Writ of Certiorari, to call for the records on the file of the First Respondent and quash the impugned order in No.AAECS8093A/Corp.Cir 6 (2)/2011-12 dated 08.12.2016 along with notice in PAN No.AAECS8903A dated 28.03.2016 issued under Section 148 of the Income Tax Act.

For Petitioner : Mr.N.V.Balaji
For Respondents : Mr.A.P.Srinivas
Senior Standing counsel
For Income Tax
[For R1 & R2]

ORDER

The writ petition is filed, questioning the validity of the order of disposal passed by the respondents, rejecting the objections filed by the writ petitioner on re-opening of



assessment initiated under Section 147/148 of the Income Tax Act, 1961[hereinafter referred to as the 'Act']

2. The petitioner is a company engaged in the business of Business process outsourcing and IT enabled Services. The petitioner company filed its return of income for the Assessment Year 2011-12 on 29.11.2011 under Section 139(1) of the Act, returning an income of 'NIL' under the normal provision of the Act and Rs.32,72,12,940/- under Section 115JB of the Act. In its return of income, the petitioner had claimed a deduction of Rs.40,16,50,014/- towards business development commission paid by it to its associated enterprise M/s.Sutherland Global Services Inc.USA.

3. The return of income filed by the petitioner was put under scrutiny and an order of assessment was passed by the assessing authority on 31.03.2015 under Section 143(3) read with Section 92CA(4) for the Assessment Year 2011-12. The assessment in all respects were completed. The petitioner had received a notice under Section 148 of the Act on 28.03.2016 for re-opening of assessment. In response, the petitioner affirmed the return of income already filed in vide letter dated 04.05.2016. The petitioner further requested to furnish reasons and the reasons are provided by the respondents for re-opening of assessment in proceedings dated 15.11.2016. The petitioner submitted its objections for re-opening of assessment in vide letter dated 05.12.2016 and the said objections were rejected by the first respondent in order dated 08.12.2016 and the said order is under challenge in the present writ petition.

4. The learned counsel appearing on behalf of the petitioner mainly contended that the order of assessment was passed, considering all the materials, books of accounts etc., filed by the petitioner. While so, notice under Section 148 was issued only based on the audit objections raised. The audit objection solely cannot be a ground for re-opening of assessment as the assessing authority has not formed any independent opinion nor applied his mind for the purpose of re-opening of assessment, which is a pre-requisite condition as contemplated under Section 147 of the Act. Thus, there is an absolute non-application of mind on the part of the assessing authority as the reasons furnished for re-opening would reveal that the audit objection as it is stands extracted.

5. Secondly, the learned counsel for the petitioner urged this Court by stating that in view of the fact that there is no application of mind and the audit objections as it is, was taken as the basis for making reassessment, the decision for re-opening is nothing but change of opinion and on this ground also, the writ petition is to be allowed.



6. With reference to the second issue of tax computation statement of the assessment order that the interest chargeable under Section 234B, the learned counsel for the petitioner reiterated that even without invoking the powers under Section 147/148, the authority is competent to charge interest and therefore, the authorities have not applied their mind as Section 147 contemplates only income chargeable to tax escaped assessment and therefore, issue No.2 would not fall under such category and thus, the very reason furnished is untenable.

7. The learned counsel for the petitioner reiterated that the objections filed by the petitioner in detail would reveal that none of the grounds raised are answered in terms of settled principles and therefore, the impugned disposal of objection is absurd and not in accordance with the provisions of the Act.

8. The learned counsel for the petitioner relied on the judgment of the Hon'ble Supreme Court of India in the case of Commissioner of Income Tax Vs. Yokogawa India Limited, reported in [2017] 77 taxmann.com 41 (SC), wherein the Apex Court made the following observations in paragraph 18, which reads as under:

"18. For the aforesaid reasons we answer the appeals and the questions arising therein, as formulated at the outset of this order, by holding that though Section 10-A, as amended, is a provision for deduction, the stage of deduction would be while computing the gross total income of the eligible undertaking under Chapter IV of the Act and not at the stage of computation of the total income under Chapter VI. All the appeals shall stand disposed of accordingly."

9. With reference to Issue No.3, as raised by the petitioner, the principles are settled in the above judgment and therefore, the very reason for re-opening of assessment is untenable and explicitly shows non-application of mind on the part of the respondent.

10. However, perusal of the judgment would reveal that the Hon'ble Supreme Court of India has delivered the said judgment after passing of the impugned order in the present writ petition.

11. The learned Senior Standing counsel appearing on behalf of the respondents disputed the contentions raised on behalf of the petitioner by stating that the writ petition itself is not maintainable as the petitioner would get ample opportunity to put forth their contentions before the assessing authority by participating in the process of reassessment. The grounds raised to assail the disposal of objections are untenable as audit objection is a valid ground for the purpose of re-opening of



assessment. In the present case, the audit objection would reveal that a survey was conducted and based on the survey conducted under Section 133A of the Act, certain materials, evidences were made available and audit objections were raised and based on such materials provided through the audit objections, the re-opening of assessment is made and therefore, there is no infirmity or perversity as such in respect of exercise of powers by the respondents under Section 147 of the Act.

12. The learned Senior Standing counsel solicited the attention of this Court that each and every issue raised by the petitioner in its objections were elaborately considered by the respondents. When all the issues were considered elaborately and the objections were dealt with by providing reason, it is for the assessee to participate in the process of reassessment and avail further opportunity to be provided and therefore, the writ petition at this juncture is not entertainable.

13. The learned Senior Standing counsel further made a submission that the principles laid down by this Court for re-opening of assessment is also scrupulously followed by the respondents in the present case. The judgments on the point were relied upon and therefore, there is no infirmity as such and the writ petition is liable to be rejected.

14. The prime question raised on behalf of the writ petitioner is that whether an audit objection can be a source for re-opening of assessment under Section 147/148 is concerned.

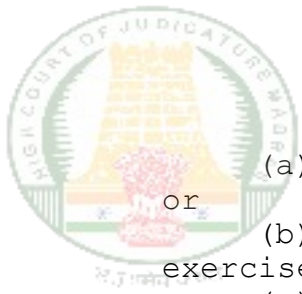
15. Let us now consider Section 147 of the Act, which contemplates if the Assessing Officer "has reason to believe" that any income chargeable to tax has escaped assessment. Admittedly, the reassessment in the present case is made within a period of four years. Therefore, the proviso clause to Section 147 of the Act is not applicable. With reference to the re-opening of assessment within four years, if any income chargeable to tax has escaped assessment, the same is sufficient for the competent authority to invoke Section 147 and issue notice under Section 148 of the Act. Therefore, the scope of re-opening of assessment within four years is more wider than that of the re-opening of assessment to be made beyond four years, but within six years. If the Assessing Officer "has reason to believe", the same would be sufficient for re-opening of assessment. Under these circumstances, a constructive interpretation is required, in order to consider the scope of the Act as well as the object sought to be achieved. The sources, through which, the Assessing Officer "has reason to believe" is one aspect of the matter and the Assessing Officer "has reason to believe" is another aspect of the matter. Sources



may be numerous and from various factors. However, the Assessing Officer must have "reason to believe" is the pre-condition for invoking of the powers under Section 147 of the Act. Thus, the scope of Section 147 cannot be narrowed down in respect of the sources, through which, the authority "has reason to believe" for re-opening of assessment. Informations, materials, sources may be from and within the department and from outside the department or from third parties. However, if the Assessing Officer received materials and on receipt of the materials, if he has 'reason to believe', that is sufficient for the purpose of re-opening of assessment and mere re-opening would not cause any prejudice to the interest of the assessee. No doubt, it may cause certain inconvenience. However, such inconvenience may not be a ground for quashing of the entire proceedings. The inconveniences would be in respect of closed assessment, a re-opening is made. However, the initial assessment is made only based on the return of income filed by the assessee as well as the documents presented. If any additional information, materials or documents are within the knowledge of the Assessing Officer after passing the assessment order, then he is empowered to re-open the assessment and it is the duty of the assessee to respond to such notice by producing additional materials, enabling the Assessing Officer to form an opinion and pass an order of assessment. Such an inconvenience cannot be construed as deprivation of right. It is a statutory obligation as the original assessment order is passed, merely based on the return of income filed by the assessee. The Revenue is provided with an opportunity to re-adjudicate the closed assessment on receipt of certain materials or informations and the Assessing Officer has 'reason to believe' that any income chargeable to tax has escaped assessment. Therefore, this Court is of the considered opinion that, whether it is an audit objection or any other material culled out from the department files or from the outside sources, it is sufficient for the purpose of exercising the powers under Section 147, if the Assessing Officer "has reason to believe".

16. This apart, in the present case, the impugned order reveals that the survey under Section 133A of the Income Tax Act was conducted at business premises of the assessee on 21.01.2013 to verify and examine the nature of remittance made to non resident without TDS during the FY 2010-11 and 2011-12 (i.e., AY 2011-12 & 2012-13). During the survey, it was noticed that the assessee had not deducted TDS on following remittances to non-resident as required under Section 195 of the Act.

17. Section 133A contemplates "(1) Notwithstanding anything contained in any other provision of this Act, an income-tax authority may enter -



- (a) any place within the limits of the area assigned to him,
or
(b) any place occupied by any person in respect of whom he exercises jurisdiction or
(c) any place in respect of which he is authorised for the purposes of this section by such income-tax authority, who is assigned the area within which such place is situated or who exercises jurisdiction in respect of any person occupying such place."

18. The scope of Section 133A would reveal that if any survey is conducted and certain materials are found out, then based on such materials, the audit objections are raised, certainly it should be construed as a material for the purpose of considering re-opening of assessment under Section 147 of the Act, provided such materials are sufficient enough for 'reason to believe'. The scope of Section 133A i.e., power of survey would apparently show that the authorities after entering into any place, and after conducting inspection, found certain materials and raised an objection, the said objections may be a ground for the Assessing Officer to 'reason to believe' for re-opening of assessment. However, if at all the assessee is having contra evidence or materials, it is left open to the assessee to produce all these files and materials at the time of reassessment proceedings. Contrarily, the petitioner cannot merely raise a ground that an audit objection cannot be a source for re-opening of assessment under Section 147/148 of the Income Tax Act.

19. This Court is of an opinion that Section 147, the conditions stipulated for re-opening of assessment as well as the scope of Section 133A are unambiguously portrays the powers of the authority to secure informations by conducting survey and such informations provided by way of an audit objections would be a cause for re-opening of assessment under Section 147/148 of the Act.

20. Each provision under Chapter XIV procedure cannot be separated as far as the Income Tax Act is concerned. Each Section has got linkage with one another as far as the procedures to be followed by the authorities competent as well as the rights of an assessee to defend their case. A balancing procedures as contemplated, undoubtedly are to be followed scrupulously by the authorities. Under these circumstances, sources cannot be questioned by the assessee. The very purpose and object of the wider scope provided under Section 147 is to ensure that in the presence of contra materials made available to the Assessing Officer, a re-opening of assessment is made and persons evaded tax are brought under the network.



21. In the present case, the objections raised regarding the reasons were dealt with by the respondents. Further, the other issues regarding change of opinion is also considered. The Assessing Officer has spelt out certain reasons, which provided a cause for re-opening of assessment and such reasons are sufficient enough and, if the petitioner / assessee is not convinced, it is left open to him to defend the case during reassessment proceedings.

22. In the present case, the Directives issued by the Hon'ble Supreme Court of India in the case of GKN Driveshafts (India) Ltd., Vs. Income Tax Officer and others reported in [(2003)259 ITR 19] was followed. The assessee also availed the opportunity and the reasons furnished as well as the objections submitted by the assessee were considered by the authorities. It is relevant to note that each and every objection filed by the petitioner was elaborately considered and all the grounds raised are also met with by the assessing authority relying on the principles laid down by the Constitutional Courts.

23. Under these circumstances, this Court is of the considered opinion that the petitioner has to defend their case by participating in the process of reassessment and accordingly, the petitioner is at liberty to do so.

24. With these observations, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

Kak

To

1. The Deputy Commissioner of Income Tax,
Corporate Circle 6(2)
Room No.705, 7th Floor,
Wanaparthi Block,
121, Mahatma Gandhi Road,
Nungambakkam,
Chennai - 600 034.



2. The Principal Commissioner of Income Tax-6,
121, Mahatma Gandhi Road,
Chennai - 600 034.

+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.36000

+1cc to Mr.N.V.Balaji, Advocate, S.R.No.36165

W.P.No.43925 of 2016

RR(CO)

RGA(13/08/2021)