IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.09.2021

CORAM

THE HON'BLE Mr.JUSTICE M.SUNDAR

W.P.No.18541 of 2021
and
W.M.P.Nos.19782 and 19785 of 2021

Bharath Wind Farm Ltd.
New No.10/1, BASCON FUTURA SV
4th Floor, Venkatnarayana Road,
T.Nagar, Chennai-600 017.
... Petitioner

-Vs.-

The Income Tax Officer
Corporate Ward 1(1), Chennai
Chennai. .. Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the Respondent in his proceedings leading to issue of Notice dated 24.03.2021 vide No.ITBA/AST/S/148/2020-21/1031704538(1)and quash the same.

For Petitioner : Mr.S.Sathiyanarayanan

For Respondent : Ms.Hema Muralikrishnan,
Senior Standing Counsel

O R D E R

Captioned writ petition turns on a very short point and therefore, with the consent of Mr.S.Sathiyanarayanan, learned counsel for lone writ petitioner and Ms.Hema Muralikrishnan, learned Revenue counsel, who accepts notice on behalf of sole respondent, main writ petition is taken up.

2. A notice being 'notice dated 24.03.2021 pertaining to assessment year 2015-2016 bearing reference

No.ITBA/AST/S/148/2020-21/1031704538(1)' [hereinafter 'impugned notice' for the sake of convenience and clarity] has been called in question in the captioned writ petition.

3. Aforementioned impugned notice is under Section 148 of 'The Income-tax Act, 1961 (43 of 1961)' [hereinafter 'IT Act' for the sake of brevity] and it has been issued by the respondent saying that the respondent has reasons to believe that income tax chargeable to tax for the aforementioned assessment year has escaped assessment within the meaning of Section 147 of IT Act.

4. Though not annexed to the typed set of papers, learned counsel for writ petitioner submits that on receipt of impugned notice, Assessee sought for reasons for reopening by predicating his request on GKN Driveshafts principle being ratio of Hon'ble Supreme Court in GKN Driveshafts (India) Ltd., Vs. Income-Tax Officer and others reported in (2003) 259 ITR 19.

5. The respondent has responded to aforementioned request of writ petitioner vide communication dated 03.05.2021 giving reasons for reopening the writ petitioner's case. To be noted, this communication does not mention about writ petitioner's request, but there is no disputation in this regard.

6. On instructions, learned counsel for writ petitioner submits that post receipt of reasons for reopening, Assessee has sent its objections and there is no disputation or disagreement in this regard. If this is the case, a mechanism put in place by Hon'ble Supreme Court vide GKN Driveshafts principle operates. This mechanism has been nicely articulated and neatly captured in one paragraph of GKN Driveshafts principle which reads as follows:

> 'We see no justifiable reason to interfere with the order under challenge. However, we clarify that when a notice under Section 148 of the Income-Tax Act is issued, the proper course of action for the noticee is to file a return and if he so desires, to seek reasons for issuing notices. The Assessing Officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the noticee is entitled to file objections to issuance of notice and the Assessing Officer is bound to dispose of the same by passing a speaking order. In the instant case, as the reasons have been disclosed in these proceedings, the Assessing Officer has to dispose of the objections, if filed, by passing a speaking order, before proceeding with the assessment in respect of the above said five assessment years.'

7. Therefore, the respondent has to now dispose of the objections by passing a speaking order before proceeding with assessment in respect of aforementioned assessment year. Learned Revenue counsel, on instructions, submits that the speaking order will be passed within a fortnight and the same will be served on the writ petitioner under due acknowledgment within three days from the date of making of the speaking order. This draws the curtains on the captioned writ petition.

8. Captioned Writ Petition is disposed of as closed, recording the stated position of the parties leaving open all the rights and contentions of both sides when proceedings move on further and are carried to its logical end. Consequently, connected WMPs are disposed of as closed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

mk

To

The Income Tax Officer
Corporate Ward 1(1) Chennai
Chennai.

+1cc to M/s.Hema Murali Krishnan, Advocate, S.R.No.44812

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KSM(CO)
SU(23/09/2021)