IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.09.2021

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

W.A.NOS.2432 AND 2468 OF 2021
AND
C,M.P.NOS.15573 AND 15931 OF 2021

Navkar Electronics,
Rep. by Anil Chand Kothari
No.4/11, Periyar Plaza,
Wallers Road, Mount Road,
Chennai - 600 002.
PAN No.AADFN4905C

... Petitioner/Appellant in both appeals

.Vs.

The Income Tax Officer,
Non-Corporate Ward - 9(3),
No.121, M.G.Road,
Chennai - 600 034.

...Respondent/Respondent in both appeals

PRAYER:-

Appeals filed under Clause 15 of Letters Patent to set aside the common order dated 01.07.2021 passed in W.P.Nos.481 and 482 of 2020.

Prayer in W.P.No.481 of 2020:-

To call for the records of the Respondent in PAN.No.AADFN4905C dated 24.12.2019 and quash the Reassessment Order dated 24.12.2019 for the academic year 2016-2017 passed therein.

Prayer in W.P.No.482 of 2020:-

To call for the records of the Respondent in PAN.No.AADFN4905C dated 24.12.2019 and quash the Reassessment

Order dated 24.12.2019 for the academic year 2017-2018 passed therein.

For Appellant in both appeals : Mr.V.S.Jayakumar

For Respondent in both appeals : M/s.Hema Muralikrishnan Senior Standing Counsel

COMMON JUDGMENT

T.S.Sivagnanam,J

These appeals are directed against the common order passed in W.P.Nos.481 and 482 of 2020 dated 01.07.2021, whereby the writ petitions filed by the appellant were dismissed.

2. The orders impugned in the writ petitions were the proceedings initiated by the respondent under Section 147/148 of the Income Tax Act ['the Act' for brevity] for the assessment years 2016-17 and 2017-18. The validity of the reopening proceedings was questioned by the appellant on several grounds. Firstly, by contending that the respondent has no jurisdiction to issue notice under Section 148 of the Act and propose to make an assessment under Section 143(3) r/w. 147 of the Act although the materials relied upon were obtained during a search under Section 132 of the Act of another party at New Delhi. Further, it was contended that where the material relied upon was obtained in the course of search of another party, the proceedings of the appellant can be initiated only under Section 153C of the Act and no re-assessment under Section 147 of the Act can be resorted to. Therefore, it was contended that the re-assessment proposed under Section 147 of the Act is without jurisdiction.

3. The appellant placed reliance on the decision of the Hon'ble Supreme Court in the case of Manish Maheshwari vs. Assistant Commissioner of Income Tax and another [(2007) 289 ITR 341 (SC)] for the proposition that if the procedure laid in Section 158BD is not followed, the assessment proceedings will be illegal and the said decision can be applied to a case under Section 153C as the provisions are in pari materia. Further, it was submitted that Section 153A to Section 153C commences with a non-obstante clause and therefore, the respondent/ Assessing Officer would have no jurisdiction to issue notice under Section 148 to reopen the assessment for the assessment years under consideration which would fall within the exclusive scope of Section 153A of the Act. Since the learned Writ Court found that the appellant had made out a prima facie case had

entertained the writ petitions and an order of interim stay was granted.

4. The respondent filed counter affidavit, firstly, raising a preliminary objection with regard to the maintainability of the writ petitions as the appellant has got an effect statutory appellate remedy. Further, by referring to the decision of the Hon'ble Supreme Court in the case of Raj Kumar Shivhare vs. Assistant Director, Directorate of Enforcement [2010 (253) ELT 3 (SC)], it was submitted that the case of the appellant would not fall under anyone of the exceptions which were pointed out in the said decision for entertaining a writ petition against the reopening proceedings. Further, it was submitted that the assessment under Section 147 was reopened on the basis of the information received from the Deputy Director of Income [Investigation]-8(1), New Delhi during the search made in the case of group of Companies under Section 132 of the act. The objections raised by the appellant for the reopening proceedings were also controverted in the counter affidavit. Further it has been stated in the counter affidavit that the assessment was reopened based on the information received about the appellant and no search material in respect of the appellant was received in the office of the respondent. In fact, such a stand has been taken in paragraphs 5, 7, 10, etc. and in other places. With regard to the contention of the appellant that Section 153A to Section 153C begin with the non-obstante clause, though the respondent accept the said position, it was contended that the notice under Section 148 of the Act cannot be issued only when the case falls within the parameters of Section 153A to Section 153C of the Act and in so far as the case of the appellant/assessee, the said provision do no apply and therefore, it does not matter as to whether those provisions commence with a non-obstante clause.

5. The writ petitions were heard by the learned Single Bench and it appears that based on certain directions, certain records were produced before the Court in a sealed cover. This Court does not have the benefit of going through the said direction issued by the Court while calling for certain records from the Department for the benefit of the Court alone.

6. Be that as it may, the Court had proceeded to consider the effect of Section 153C and has observed that nowhere in Section 147, the provisions of Section 153C stands excluded. However, we find that the contentions which were raised by the appellant with regard to the validity of the reopening proceedings which were sought to be controverted by the respondent have not been decided which in our opinion was the case to be decided by the Writ Court. In any event, the appellant has filed appeals before the First Appellate Authority

well within the period of limitation. Therefore, we are of the view that the appellant should pursue the appellate remedy instead of agitating the matter before this Court in these appeals. We are conscious of the fact that the observations/ findings rendered by the learned Writ Court may cause prejudice to the appellant or to the Department. Therefore, if the appellant is to be relegated to pursue the appellate remedy, all such findings needs to be vacated, otherwise it would tantamount to putting fetters on the exercise of the powers of the appellate remedy which should not be done. Thus, all issues are left open and the appellant is at liberty to canvas all factual and legal issues before the First Appellate Authority which shall be considered and decided by the First Appellate Authority in accordance with law.

7. In the light of the above finding, the writ appeals are allowed, the common order passed in the Writ Petitions is set aside and the appellant is at liberty to raise all issues in the appeals which they have filed before the First Appellate Authority. The appellant is also granted liberty to raise additional grounds if a need arises to do so. It is needless to state that the appellate authority shall decide the matter on merits and in accordance with law and not to be guided by anyone of the finding rendered by the learned Writ Court which have been vacated by us. No costs. Consequently, connected miscellaneous petitions are closed.

8. As pointed out earlier, the learned Writ Court had entertained the writ petitions on being satisfied that the appellant had made out a prima facie case. During the pendency of the writ petitions, the appellant had the benefit of interim stay of the re-assessment proceedings. Therefore, pending appeals before the First Appellate Authority, the appellant's interest needs to be protected and accordingly, the re-assessment proceedings shall remain stayed till the disposal of the appeals by the First Appellate Authority and abide the decision to be passed on those appeals.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

cse

To

The Income Tax Officer,
Non-Corporate Ward - 9(3),
No.121, M.G.Road,
Chennai - 600 034.

+2ccs to Mr.V.S.Jayakumar, Advocate, S.R.Nos.50732 & 50733
+1cc to M/s.Hema Muralikrishnan, Advocate, S.R.No.50648

W.A.NOS.2432 AND 2468 OF 2021

SJ(CO)
PBS/20/10/2021