IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2021

CORAM

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

W.A.No.2529 of 2021 & C.M.P.No.16428 of 2021

M/s.Orchid Pharma Limited,
Rep., by its Managing Director,
Mr.Manish Dhanuka,
"ORCHID TOWERS",
No.313, Valluvar Kottam High Road,
Nungambakkam, Chennai-600 034. .. Appellant/Petitioner

[Cause title accepted vide order dated 22.09.2021 made in C.M.P.No.15153 of 2021 in W.A.SR No.79607 of 2021]

-vs-

The Deputy Commissioner of Income Tax,
Company Circle V(1),
121, Nungambakkam High Road,
Chennai-600 034.
(Now with the jurisdiction of)
The Assistant Commissioner of Income Tax,
Central Circle 1(1), 121, Mahatma Gandhi High Road,
Chennai-600 034. .. Respondent/Respondent

Appeal under Clause 15 of Letters Patent against the order dated 27.05.2021 in W.P.No.28052 of 2010.

PRAYER IN WP.NO.28052 OF 2010: Petition filed under Article 226 of the Constitution of India to issue a writ of certiorari, to call for the records of the respondents and quash the impugned notice issued under Section 148 of the Act in PAN.AAACO0402-B/82 dated 11.11.2009 and consequently quash the proceedings in No.AAACO 0402B/2010-11/82, dated 01.12.2010 as illegal and without jurisdiction.

For Appellant : Mr.R.Sivaraman,
assisted by Ms.Vandhana Vyas

For Respondent : Ms.Hema Muralikrishnan,
Senior Standing Counsel

JUDGMENT
(Delivered by T.S.Sivagnanam, J.)

This appeal, by the writ petitioner, is directed against the order dated 27.05.2021 in W.P.No.28052 of 2010.

2.The said writ petition was filed by the appellant challenging a notice issued under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") dated 11.11.2009, and the proceedings of the respondent dated 01.12.2010, by which the objections raised by the appellant for the reopening was rejected.

3.The principle ground on which the writ petition was filed is by contending that the reopening is a case of change of opinion and the respondent has no jurisdiction to reopen the assessment for the reasons set out in the proceedings dated 23.04.2010.

4.The learned Single Bench had dismissed the writ petition and while doing so, has made an observation that prima facie, the reopening appears to be in order.

5.There were three issues, which were subject matter of reopening. The first being, the deduction claimed under Section 10B of the Act.

6.The learned counsel appearing for the appellant would contend that this issue was dealt with by the Assessing Officer during the scrutiny assessment and after considering the objections filed by the appellant, the disallowance was reduced, which will go to show that for the same issue, reopening cannot be done and if permitted, it would amount to change of opinion.

7.So far as the second issue with regard to deduction under Section 80HHC of the Act is concerned, even in the scrutiny assessment under Section 143(3), the same was not allowed and a petition under Section 154 of the Act was filed and an order came to be passed, which was challenged before the Tribunal and it was held that such an order could not have been passed invoking the powers under Section 154 of the Act. Therefore, the assessee would contend that the same cannot be a reason for reopening the assessment under Section 148 of the Act.

8.The third issue arises out of a survey, which had taken place much after the notice under Section 148, dated 11.11.2009 and the said amount has also been remitted by the assessee.

9.The learned Single Bench dismissed the writ petition directing the respondent to pass appropriate orders in accordance with law within a time frame.

10.The appellant filed a Miscellaneous Petition supported by an affidavit signed by the Managing Director of the appellant from which, we find that the appellant wanted extension of time for the respondent to pass appropriate orders, since the appellant was in the process of collating details of all pending litigations, which were initiated/pending prior to the acquisition of the appellant company by Ms/.Dhanuka Laboratories Ltd. This petition was considered and the learned Single Bench extended the time and subsequently, the appellant had filed this appeal before this Court and the appeal was not numbered immediately because, change of cause title has to be ordered and when the appeal was in the process of being numbered, it appears that the appellant had made an oral mention before the learned Single Bench for further extension of time. From the affidavit filed in support of the Miscellaneous Petition, seeking extension of time, which was filed during July 2021, we find that the appellant was agreeable to cooperate in the proceedings before the respondent. Nevertheless, the learned Single Bench while dismissing the writ petition, had taken note of all the facts and has recorded a prima facie view that the reopening is in order. However, there is no specific finding as regards the plea raised by the assessee that the reopening is a case of change of opinion.

11.Be that as it may, the respondent has complied with the direction issued by the learned Single Bench and an assessment order has been passed on 01.10.2021. Such an order can be questioned by way of appeal before the Commissioner of Income Tax (Appeals) [for brevity "the CIT(A)"], which avenue is always open to the appellant.

12.We take note of the submission of the learned counsel for the appellant that the appellant cannot be of disadvantageous position, if they are not permitted to canvass the issue regarding validity of the reopening proceedings more so when, the learned Writ Court has not out rightly rejected the contentions raised by the appellant questioning the validity of the reopening. We had appreciated the said submission of the learned counsel for the appellant, as observed, a prima facie finding has been recorded by the learned Writ Court, but we do not find any conclusive finding on the validity of the reopening of the assessment after taking note of the objections, which have been raised by the appellant questioning the reopening. Therefore, we are of the view that the appellant should not be put to prejudice while filing an appeal before the CIT(A) as against the assessment order wherein, they should be permitted to also raise the issue regarding the validity of the reopening, which can be decided by the CIT(A) as first among the several issues. For such reason, we are inclined to vacate all findings, which have been recorded by the learned Single Bench touching upon the validity of the reopening proceedings.

13.In the result, the writ appeal is partly allowed and the observations and findings recorded by the learned Single Bench touching upon the validity of the reopening of the assessment are vacated and the appellant is granted liberty to file appeal before the Commissioner of Income Tax (Appeals) questioning the correctness of the assessment order dated 01.10.2021 canvassing all factual and legal grounds including the validity of the reopening of the assessment and in the event, the appellant does so, the CIT(A) shall consider the issue relating to the validity of the reopening as first among the several issues, which may be raised before the said authority. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

abr

To

The Deputy Commissioner of Income Tax,
Company Circle V(1),
121, Nungambakkam High Road,
Chennai-600 034.
(Now with the jurisdiction of)
The Assistant Commissioner of Income Tax,
Central Circle 1(1),
121, Mahatma Gandhi High Road,
Chennai-600 034.

+1cc to Mr.Hema Muralikrishnan, Advocate, S.R.No.52576

W.A.No.2529 of 2021

CP(CO)
GN(01/11/2021)