IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16.08.2021

CORAM:

THE HON'BLE MR. JUSTICE S.M.SUBRAMANIAM

WP No.3950 of 2014
and
M.P.No.1 of 2014

M/s.JP Jai Land & Building Promoters P Ltd.
Rep. By its Director, Mr.J.Jenil Jaison,
36, Ram Nagar South, 8th Cross St.,
Madipakkam,
Chennai – 600 091.

.. Petitioner

Vs

The Deputy Commissioner of Income Tax,
(Previously Assistant Commissioner),
Company Circle II (3),
121, Nungambakkam High Road,
Chennai – 600 034.

.. Respondent

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari, calling for the records on the file of the respondent and quash the impugned notice issued by the respondent u/s.148 of the Act in PAN No.AABCJ7618K dated 26.12.2012 for the assessment year 2008-09 and consequentially quash the proceedings in No.AABCJ7618K/2008-09 dated 10.01.2014.

For Petitioner : Mr.R.Sivaraman

For Respondent : Mrs.Hema Muralikrishnan
Senior Standing Counsel of Income Tax

ORDER

The notice issued under Section 148 of the Income Tax Act, as well as the order disposing of the objections passed by the respondent in proceedings dated 10.01.2014 are under challenge in the present writ petition.

2. The petitioner is a private limited company registered under the provisions of the Companies Act. The petitioner company was assessed to Income Tax on the file of the respondent. It submitted the return of income for the assessment year 2008-09 on 26.06.2009 showing the taxable income of Rs.65,99,370/-. The return was duly processed under Section 143(1). There was a survey under Section 133A of the Act by the Investigation Wing on 31.07.2009. The case was selected for scrutiny assessment. The petitioner furnished all the details as well as the documents and the assessing officer considered all the materials available on record and passed the assessment order on 02.12.2010.

3. While so, a notice under Section 148 of the Income Tax Act was issued to the petitioner on 26.12.2012. In response, the petitioner vide letter dated 17.01.2013 requested the respondent to treat the return filed on 26.06.2009 as the return filed in response to the notice issued under Section 148 of the Act. The petitioner requested to furnish the reasons and the respondent in their letter dated 18.04.2013 furnished the reasons for reopening of the assessment for the Assessment Year 2008-09. The petitioner filed their objections in detail and the said objections were rejected. Thus, the petitioner is constrained to move the present writ petition.

4. The learned counsel appearing on behalf of the writ petitioner mainly contended that the assessment order was passed under Section 143(3) of the Income Tax Act on 02.12.2010. The survey under Section 133A of the Act was taken prior to the passing of the assessment order. Thus, the assessing officer had considered the materials with reference to the report of survey and therefore, the reopening of assessment made is a 'change of opinion'. In other words, it is contended that the scrutiny of assessment was undertaken after survey and the assessing officer has considered all the matters available in the survey report and therefore, there is no reason for

reopening of the assessment and it is reopened on change of opinion.

5. In order to substantiate the said contention, the learned counsel for the petitioner drew the attention of this Court with reference to the order of assessment passed originally on 02.10.2010 wherein the details furnished by the petitioner were considered. The learned counsel for the petitioner reiterated that a survey under Section 133A was conducted in the business premises of the petitioner on 31.07.2009. However, assessment order was passed on 02.12.2010, after a lapse of about one year. Thus, the assessing officer had an opportunity to verify the survey report and in the present case, the survey report was considered by the assessing officer and therefore, there is no tangible material for the purpose of reopening of the assessment, as required under Section 147 of the Act. It is contended that the impugned order disposing of the objections, is perverse on the ground that the objection raised in this regard by the petitioner, were not considered by the respondent. But citing the judgment which is not applicable to the facts of the petitioner's case, the respondent has disposed of the objections. Thus, the order impugned is liable to be set aside.

6. Learned counsel for the petitioner reiterated that the judgment of the Delhi High Court [Consolidated Photo & Finvest Ltd. v. ACIT, reported in (2006)151 Taxman 41], by the respondent is not applicable to the case of the petitioner and by erroneously applying the principles, the objections were rejected. Thus, the writ petition is to be considered.

7. The learned Senior standing counsel appearing on behalf of the respondent refuting the contentions raised by the petitioner by stating that the judgment cited by the revenue in the impugned order disposing of the objections may not be taken into consideration as the reassessment was made based on tangible material. The facts in this case are relevant for considering the writ petitions. No doubt the survey under Section 133A was conducted on 31.07.2009. Admittedly, the assessment order under Section 143(3) was issued on 02.12.2010. However, the survey report was not placed before the assessing officer while passing the assessment order and perusal of the assessment order would reveal that there is no reference

regarding the survey report filed under Section 133A of the Act. Thus, the Assessing officer thought fit and initiated reopening proceedings by invoking section 147 of the Act.

8. The reasons furnished in the letter dated 18.04.2013 would reveal that Rs.2.26 crores have been paid in cash to Shri M.C.Raja, during the financial year 2007-08 and the same has not been accounted in the cash book of the assessee-company. However, the assessee has not offered any explanation for the nature and source of such payments.

9. The objections filed by the petitioner would reveal that the assessment was taken up for compulsory scrutiny and the details / evidence called for were furnished and thoroughly scrutinised by the department. The scrutiny assessment was also completed on 02.12.2010 assessing the income at a huge figure of Rs.1,43,61,890/- as against the income returned of Rs.65,99,370/-. A cursory look at the assessment order passed would clearly indicate that all the details called for were furnished to the assessing officer. The observation in this regard being, “the assessee has furnished the details vide letter dated 24.09.2010 and the letter dated 04.10.2010”.

10. Relying on the said objections, the learned Senior standing counsel reiterated that the cash transactions were not considered by the assessing officer at the time of passing the original assessment order. When new informations or materials are identified from the survey report, then it is a fit case for reopening the assessment. Further, the reopening in the present case has been done within a period of four weeks. Therefore, the assessment officer is empowered to continue the proceedings and complete the reopening proceedings by following the procedures as contemplated.

11. This court is of the considered opinion that if the assessing officer has reason to believe that the income chargeable to tax escaped assessment then it is sufficient for invoking the powers under Section 147 of the Act. Citing an inapplicable judgment in the disposal order would not vitiate the entire reopening proceedings.

12. The only ground raised by the petitioner is that the survey report under Section 133A was available with the

assessing officer, even prior to the passing of the assessment order on 02.12.2010 and therefore, the assessment officer had considered the survey report at the time of passing the assessment orders. Such a defence is presumptive in view of the fact that there is no reference regarding the survey report in the assessment order. If at all the assessing officer considered the survey report then, there must be some findings or observations or reference regarding such survey report.

13. In the present case, the reasons for reopening would reveal that a survey under Section 133A was conducted in the business premises of the petitioner on 31.07.2009 and they found that huge cash payments were made and these cash payments were not taken into consideration at the time of scrutiny assessment and passing assessment order on 02.12.2010. Thus, the assessing officer has reasons to believe that such payments which were not considered during the original assessment escaped assessment and therefore, notice under Section 148 of the Act was issued. Once a tangible new material is identified and such materials were not considered by the assessment officer while at the time of passing original assessment order, it is sufficient to reopen the assessment and it is for the petitioner to defend his case by availing the opportunities to be provided during the course of the reopening proceedings.

14. In view of the discussions made above, the petitioner has not made out any acceptable ground for the purpose of setting aside the impugned orders. Contrarily, the revenue could able to establish that the assessing officer has reasons to believe for reopening of assessment as the survey report under Section 133A was not considered at the time of passing of the original assessment order and further, huge cash transactions were identified during the survey. Thus, the petitioner is bound to cooperate for the completion of reopening proceedings, which is to be expedited. Accordingly, the writ petition is dismissed. No Costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-IX)

// True Copy //

Sub Assistant Registrar

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To

The Deputy Commissioner of Income Tax,
(Previously Assistant Commissioner),
Company Circle II (3),
121, Nungambakkam High Road,
Chennai – 600 034.

WP No.3950 of 2014

PMK(CO)
B.VC(08/09/2021)