IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :30.06.2021

CORAM

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

W.P.No.9409 of 2016
and
W.M.P.No.8392 of 2016

M/s.Financial Software & Systems (P) Ltd.,
No.42, Ground Floor, Saradha Apartments,
3rd Main Road, Gandhi Nagar,
Adyar, Chennai - 600 020. ...Petitioner

Vs

Deputy Commissioner of Income Tax,
Company Circle 2 (1),
7th Floor, New Block,
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, calling for the records on the file of the respondent and quash the impugned proceedings in AAACF2351F/10-11 dated 26.02.2016 along with notice issued by the respondent under Section 148 of the Act dated 20.03.2015.

For Petitioner : Mr.N.V.Balaji

For Respondents : Mr.D.Prabhu Mukunth Arunkumar
Standing Counsel for Income Tax

O R D E R

The Notice dated 20.03.2015 issued under Section 148 of the Income Tax Act and the order dated 26.02.2016 disposal of the objections filed by the petitioner for reopening of assessment, are under challenge in the present writ petition.

2. The petitioner is a 'Payment Systems Company' with domain expertise in the areas of financial transaction

processing and payment solution and its expertise include transaction switching & payment systems; debit, prepaid, smart and credit cards processing; front-end devices, host systems & interchanges; internet & Mobile payments; merchant management; system integration, financial inclusion & micro banking.

3. The petitioner filed its return of income electronically for the Assessment Year 2010 - 11 on 02.10.2010 returning a total income of Rs.39,58,67,100/- after claiming deduction under Section 10 B of the Act. The respondent initiated the assessment proceedings by issuing notice under Section 143 (2) of the Act, followed by various notices under Section 142 (1) of the Act calling for information. The petitioner submitted all the materials, informations, books of accounts etc., to the satisfaction of the Assessing Officer, who in turn considered the same and passed an assessment order under Section 143 (3) of the Act on 30.03.3013.

4. Surprisingly, on 20.03.2015, a notice was issued under Section 148 of the Income Tax Act for reopening of assessment stating that the Assessing Officer has reason to believe that the income chargeable to tax for the Assessment Year 2010 -11 has escaped assessment. Thereafter, the petitioner submitted a letter seeking reasons for reopening of assessment proceedings and the reasons were provided by the respondent in proceedings dated 20.08.2015. Thus, the petitioner submitted its objections on 04.09.2015. The said objections were disposed of by the respondent in order dated 26.02.2016. Thereafter the notice under Sections 142 (1) and 142 (2) of the Income Tax Act was issued to the petitioner on 26.02.2016.

5. The learned counsel for the petitioner mainly contended that the basis for initiation of reassessment proceedings is not in consonance with the factual details furnished by the petitioner. The petitioner has submitted detailed objections with reference to the reasons furnished. The specific objections raised in Paragraph No.2 of the letter dated 04.09.2015 has not been dealt with by the Assessing Officer and therefore, the order of disposing of the objections are improper and liable to be set aside.

6. The learned counsel for the petitioner reiterated that the validity of jurisdiction to initiate reassessment proceedings is also an objection raised. This apart, the details with regard to issue of shares was provided in letter dated 09.11.2012 and details of expenses relating to issue of shares is provided in letter dated 05.12.2012. None of these letters were considered by the Assessing Officer and no findings are given in the order impugned. Thus, the matter is to be remanded back for fresh consideration.

7. The learned Standing Counsel appearing on behalf of the respondents objected the said contention by stating that perusal of the objections would reveal that the petitioner has raised validity of jurisdiction to initiate reassessment proceedings in the present case. Admittedly, reopening of assessment proceedings are initiated within a period of four years and therefore, the scope is wider enough to proceed with.

8. The learned Standing Counsel for the respondents solicited the attention of this Court with reference to the findings made in the impugned order. The impugned order dated 26.02.2016, reveals that since the details required with regard to issue of shares was provided during the course of regular assessment, reopening of assessment will tantamount to reapplication of mind on the same set of facts and the same is nothing but a fresh examination of the legal proposition after the scrutiny assessment under Section 143 (3), which is in effect of framing a different opinion on the same set of facts which impermissible under reassessment proceedings. In simple terms, the Act provides authority to the Assessing Officer to re-assess the income of the assessee but not to review his own decision. Paragraph No.2.1 states that as per first proviso to Section 147, the question whether there is failure on the part of the assessee to disclose fully all material facts arises only in cases where assessment under Section 143 (3) has been completed and four years from the end of the relevant assessment year has expired. Since the action under Section 147 was initiated before the expiry of four years from the end of Assessment Year 2010 -11. The contentions of the petitioner are not valid.

9. The learned counsel for the petitioner also in its objections referred few judgments of the Constitutional Courts and the learned Standing Counsel for the respondents also referred judgments in their favour. High Court cannot conduct a roving enquiry with reference to the facts and details which are to be scrutinized and ascertained through the original documents and evidences. If the reasons furnished are sufficient and if the objections are dealt with in accordance with the provisions of the Act, it would be sufficient for the requirement to be complied with. At the initial stage, one cannot expect that entire facts are to be adjudicated. It is only initiation of reopening of proceedings and notice was issued, thereafter objections were filed and thereafter reasons were given to assessee and based on the reasons, he has passed an assessment and such objections are disposed of. Thereafter the assessment / reopening of assessment proceedings are to be proceeded with and the assessee has to cooperate by furnishing all further clarifications, details, information etc., for the purpose of

completion of reassessment proceedings. In this regard notice was also issued under Section 142 (5) on 26.02.2016. Therefore, if at all any further information or materials are to be clarified or to be produced, the assessee is at liberty to do so and the Assessing Officer is also empowered to look into those materials or information and proceed in accordance with law and by following the procedures contemplated.

10. At the stage of initiation of reopening proceedings under Section 147 of the Income Tax Act, what is contemplated is notice under Section 148 of the Act within the time limit as prescribed under Section 149 and thereafter, if any request is made by the assessee, the reasons are to be furnished by the Assessing Officer and the assessee is at liberty to submit its objections for the reasons and thus objections are to be disposed of by the Assessing Officer.

11. Perusal of the objections raised as well as the reasons stated in the disposal of objections by the Assessing Officer would be sufficient and further details or scrutiny cannot be made by the High Court in a writ proceedings and all such documents, materials or informations are to be considered by the Assessing Officer while proceeding with the reassessment.

12. This Court do not find any non-application of mind with reference to the order impugned dated 26.02.2016. The Assessing Officer has given reasons for rejection of the objections. Such reasons may not be acceptable to the assessee. However, it is for him to provide further details or information to the Assessing Officer while proceeding with the reassessment proceedings.

13. This being the factum of the case, this Court do not find any acceptable reason for the purpose of interfering with the orders impugned. Accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

Pns

To

Deputy Commissioner of Income Tax,
Company Circle 2 (1),
7th Floor, New Block,
121, Mahatma Gandhi Road,
Chennai - 600 034.

+1cc to Mrs.Hema Muralikrishnan, Advocate, S.R.No.30122

+1cc to Mr.N.V.Balaji, Advocate, S.R.No.30169

PL(CO)
RVM(23/07/2021)