IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :03.08.2021

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.34420 of 2013

Santhosh Kumar Kanodia ... Petitioner

Vs

1. The Union of India,
   Rep.by the Secretary to Government,
   Ministry of Finance,
   Department of Revenue,
   New Delhi.

2. The Assistant Commissioner of Income Tax,
   Circle-III,
   63, Race Course Road,
   Coimbatore – 641 018.

3. The Joint Commissioner of Income Tax,
   63, Race Course Road,
   Coimbatore – 641 018. ... Respondents

Prayer : Writ Petition filed Under Article 226 of the Constitution of India to issue of Writ of Certiorari, calling for the records comprised in the impugned notice of the 2nd respondent dated 20.03.2013 in respect of Assessment Year 2006-07 issued by the second respondent purportedly under Section 148 of the Income Tax Act, 1961 and all consequential proceedings thereto including the consequential communication of reasons dated 22.10.2013 and the notice dated 31.10.2013 and 26.11.2013, bearing number ALEPS7649L/CIR-III/CBE/2013-14 and ALEPS7649L/CIR-III/CBE/2013-14 respectively, quash the same as being wholly without jurisdiction, illegal, arbitrary and contrary to the express mandates set out under the provisions of the Income Tax Act, 1961.

For Petitioner : Mr.Rahul Balaji

For Respondents R1 : Mr.Hajamohideen Gisthi
Senior Central Government
Standing counsel

R2&R3 : Mr.A.P.Srinivas
Senior Standing counsel
[For Income Tax]

ORDER

The writ on hand is filed, challenging the notice issued under Section 148 of the Income Tax Act [hereinafter referred to as the 'Act'] and consequential proceedings of a communication of reasons dated 22.10.2013 and the notices dated 31.10.2013 and 26.11.2013.

2. The petitioner is a partner of M/s.Sumukha Enterprises, apart from carrying on business of a proprietary concern under the name and syle of M/s.Ekdanta Synthetics. The petitioner states that on 14.12.2005, there was a survey conducted in the premises of the proprietary concern of the assessee / petitioner under Section 133A(3)(ia) during the course of which several registers showing inter alia details of actual yarn received, details of production of fabric from yarn, details of actual realization of sale made by cheque on the sale of yarn, pay slip books of Tamil Nadu Mercantile Bank, details of third party cheques received by the petitioner, books of accounts.

3. The learned counsel for the petitioner contended that a survey report dated 27.02.2006 was made available regarding the materials and the said materials is taken up for the purpose of reopening of assessment, for the Assessment Year 2006-07. The learned counsel for the petitioner is of an opinion that the very basis for reopening of assessment is not in consonance with the provisions of the Income Tax Act. The survey report made available and considered at the time of passing assessment order, the very same material is taken into account for the purpose of reopening of assessment and therefore, it is a case of change of opinion and not based on any new tangible materials.

4. This Court is of the considered opinion that Explanation 1 to Section 147 enumerates that “Production before the Assessing Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of the foregoing proviso.” There are various other circumstances are enumerated under Explanation 2 to Section 147 of the Act. Therefore, the very same materials, which were produced at the time of original assessment, if the Assessing Officer has 'reason to believe' that there are certain new materials identified regarding escapement of tax, then he is empowered to invoke Section 147 of the Act for reopening of assessment. Therefore, the very contention of the petitioner that the very same material produced at the time of passing

original assessment order is considered for reopening of assessment, requires an elaborate adjudication before the competent authorities and this Court cannot go into such details relatable to the disputed facts.

5. Perusal of the reasons furnished for reopening of the assessment, for the Assessment Year 2006-07 states as follows:

> "1. To assess the Actual sales as per information available in the impounded materials.
> 2. To verify the genuineness of conversion charges claimed in the profit and loss account with the impounded materials.
> 3. To examine the genuineness of claim of discount with respect to sales undertaken.
> 4. To examine the cash deposit in bank accounts with the impounded materials.
> 5. To examine the negative cash balance available on the date of survey with the impounded materials.
> 6. To assess the actual closing stock with respect to the impounded materials.
> 7. To examine the net profit shown in the return of income with the impounded materials."

6. Regarding the reasons stated, the Assessing Officer sent a letter on 31.10.2013, requesting the petitioner/assessee to appear for hearing either in person or through authorized representative on 14.11.2013 Further, an opportunity was given to the assessee in letter dated 26.11.2013 by the Assessing Officer. Instead of appearing before the Assessing Officer, and submit objections and other documents, the petitioner has chosen to file the present writ petition. The assessee has not even filed his objections regarding the reasons furnished for reopening of assessment. In order to comply with the directives of the Apex Court in the case of GKN Driveshafts (India) Ltd., Vs. Income Tax Officer and others reported in [(2003)259 ITR 19]. On receipt of reasons, the petitioner has to submit objections.

7. In the present case, the Assessing Officer has given opportunity twice for personal hearing and the said proceedings were not utilized by the assessee. No objections are filed. Thus, the petitioner is at liberty to participate in the process of the proceedings by submitting his objections and in the event of filing any such objections, the said objections are to be considered and the same is to be disposed of as per the directives of the Hon'ble Supreme court. Thereafter, the Assessing Officer has to proceed with the process of reassessment and order of reassessment in the manner known to law. After passing an assessment order, if the petitioner is

still aggrieved, then the Appellate remedy is to be exhausted under the provisions of the Income Tax Act.

8. This being the procedures to be followed, the grounds raised on merits at this point of time, cannot be adjudicated in a writ proceedings before the High Court and therefore, the petitioner is at liberty to participate in the process of reassessment proceedings.

9. With these directions, the writ petition stands dismissed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
   Union of India,
   Ministry of Finance,
   Department of Revenue,
   New Delhi.

2. The Assistant Commissioner of Income Tax,
   Circle-III,
   63, Race Course Road,
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+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.37662

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SR-II(CO)
CT/25/08/2021