IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2021

CORAM

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

W.P.No.24770 of 2013

M/s.Tamil Nadu Minerals Limited,
#31, Kamarajar Salai, TWAD House,
Chepauk, Chennai - 600 005,
Rep.by its Managing Director,
Mr.M.Vallalar ...Petitioner

Vs

1.Union of India,
Rep.by its Secretary,
Ministry of Finance,
Department of Revenue,
Room No.46, North Block,
New Delhi - 110 001.

2.The Assistant Commissioner of Income Tax,
Company Circle - III (1),
Room No.411, New Block,
121, M.G.Road, Nungambakkam,
Chennai - 600 034. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Prohibition, prohibiting the second respondent from proceeding further to complete the reassessment pursuant to Notice u/S.148 dated 27.03.2013 for the A.Y. 2008 - 09 in PAN No.AABCT2250P.

For Petitioner : Mr.M.P.Senthil Kumar

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

O R D E R

The notice was issued under Section 148 of the Income Tax Act in proceedings dated 27.03.2013, is under challenge in the present writ petition.

2. The petitioner is a Government of Tamil Nadu undertaking, which is engaged in the business of granite quarrying on the land granted by the Tamil Nadu for quarry on lease to the petitioner under Rule 8C of Tamil Nadu Minor Mineral Concession Rules, 1959 on nomination basis and not through tender cum auction process. The petitioner is an assessee to Income Tax in the files of the respondent. They filed its original return of income for the Assessment Year 2008 - 09 on 30.09.2008. It was taken up for scrutiny assessment and the return of income filed was scrutinized and the clarifications sought by the Assessing Officer was explained. By accepting all the documents, books of accounts and reasonings, the order of assessment was passed by the respondent on 29.10.2010 under Section 143 (3) of the Income Tax Act for the assessment Year 2008 - 09. While so, the impugned notice under Section 148 of the Act was issued by stating that the income chargeable to tax has escaped assessment within the meaning of Section 147 of the Income Tax Act.

3. The petitioner submitted their request to furnish the reasons and thereafter its objections and the said objections were rejected by the respondents in letter dated 22.07.2013. Thus the petitioner is constrained to move the present writ petition.

4. The learned counsel for the petitioner made a submission that the reasons for reopening of assessment is nothing but a change of opinion. The reasons stated were already considered elaborately in original assessment order and therefore, the respondents cannot reopen merely based on a change of opinion. It is contended that with reference to the same issue in respect of the Section 37 and 43 B, the issues were considered and settled by the Hon'ble Division Bench of this Court in T.C.No.1806 of 2008 dated 22.04.2019. Relying on the said judgment, the learned counsel for the petitioner reiterated that the reasons now furnished for reopening of assessment cannot be sustained, in view of the principles laid down by the Hon'ble Division Bench of this Court.

5. The learned Standing Counsel objected the said contentions by stating that all these conditions are to be taken before the Officer and therefore, petitioner cannot maintain the writ petition at this point of time and further the writ petition is for grant of prohibition and such a relief need not be granted at this juncture, as the respondents must be allowed to complete the reassessment proceedings in accordance with law. It is contended that even in Explanation 2 Sub Section C to Section 147, the respondents are empowered to reopen the assessment, even in cases where under assessment is identified.

6. Therefore, all these facts are to be considered by the Assessing Officer and thus, the writ petition is to be rejected. This Court is of the considered opinion that in respect of the very same issue pertaining to Section 37 and 43 B of the Income Tax Act, the Hon'ble Division Bench of this Court, settled the principles. As per the judgment, the reopening of assessment is to be reconsidered by the Authorities themselves and unnecessary continuation of reopening of assessment is to be avoided. Once the Courts have settled the principles with reference to certain issues raised between the parties, the said principles are to be adopted in similar cases and more specifically, in respect of the same assessee, as in the present case. Unnecessary prolongation of litigations are to be avoided. Thus, the respondents are bound to look into the principles laid down by the Hon'ble Division Bench of this Court in the judgment cited supra and pass appropriate orders in the case of the writ petitioner.

7. Under these circumstances, the order disposing of the objections filed by the petitioner in proceedings dated 22.07.2013 is set aside by molding the relief sought for in the present writ petition. The matter is remanded back to the respondents to reconsider the objections filed by the writ petitioner in the light of the judgment of the Hon'ble Division Bench of this Court delivered in T.C. No.1806 of 2006, dated 22.04.2019 and pass appropriate orders, as expeditiously as possible and preferably within a period of three months from the date of receipt of a copy of this order and by affording an opportunity to the writ petitioner.

8. With these directions, the writ petition stands allowed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Pns

To

1.The Secretary,
Union of India,
Ministry of Finance,
Department of Revenue,
Room No.46, North Block,
New Delhi – 110 001.

2.The Assistant Commissioner of Income Tax,
Company Circle - III (1),
Room No.411, New Block,
121, M.G.Road, Nungambakkam,
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PCH (CO)
PR (03/08/2021)