IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.10.2021

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.NO.22984 OF 2021
&
WMP.NO.24190 OF 2021

C.Rajeswari ... Petitioner

.Vs.

Additional/Joint/Deputy
Assistant Commissioner of Income Tax/
Income Tax Officer
National Faceless Assessment Cricle
Delhi ...Respondent

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records in order dated 21.09.2021 bearing No.ITBA/AST/S/147/2021-22/1035753108(1) issued by the Respondent under Section 147 r/w.S.144 and 144AB of Income Tax Act, 1961 (hereinafter 'the Act') for PAN BHPPR5466] and to quash it as illegal, arbitrary and unlawful and to consequently forbear the Respondent from in any manner reassessing the Petitioner's income under Section 147 of AY 2014-15.

For Petitioner : Mr.Suhrith Parthasarathy

For Respondent : Mr.A.N.R.Jayapratap
Junior Standing Counsel (IT)

ORDER

Captioned main writ petition has been filed assailing an 'Assessment Order dated 21.09.2021 made under Section 147 read with Sections 144 and 144B of 'The Income-tax Act, 1961 (43 of 1961)' [hereinafter 'IT Act' for the sake of brevity] regarding Assessment Year 2014-15 qua writ petitioner' (hereinafter 'impugned order' for the sake of convenience and clarity). To be noted, '2014-15' shall hereinafter be referred to as 'said

AY' denoting 'said Assessment Year' for the sake of convenience and clarity.

2. Mr.Suhrith Parthasarathy, learned counsel for writ petitioner submits that his challenge qua impugned order is broadly four fold and they are as follows:

a) Notice under Section 148 of IT Act was issued on 27.03.2019, hard copy was served on the writ petitioner (physically) on 26.04.2019, the writ petitioner responded on 17.05.2019 inter alia asking for reasons for re-opening as per GKN Driveshafts principle being principle laid down by Hon'ble Supreme Court in GKN Dridveshafts (India) Limited Vs. ITO reported in 259 ITR 19 : (2003) 1 SCC 72, but thereafter by-passing the GKN Driveshafts legal mechanism the writ petitioner was visited with the impugned order. This is violation of GKN Driveshafts principle;

b) As a sequitur to the above, no personal hearing has been granted;

c) As a further sequitur to the above, draft Assessment Order as required under Section 144B of IT Act has not been served on the writ petitioner;

d) Post impugned order it later came to light that respondent has issued two notices under Section 142(1) of IT Act, one dated 25.08.2021 and the other dated 06.09.2021, but both have been sent to the writ petitioner's son's e-mail ID which is rarely used in complete contradistinction to the aforementioned 27.03.2019 Section 148 notice, which was duly served (physically) on the writ petitioner.

3. Mr.A.N.R.Jayapratap, learned junior Standing Counsel for Income Tax, accepted notice for the sole respondent.

4. Owing to the narrow compass on which captioned writ petition turns, captioned main writ petition was taken up with the consent of learned counsel on both sides.

5. Responding to the aforementioned arguments of learned counsel for writ petitioner, learned Revenue counsel defended the impugned order and made emphatic submissions, a summation of which is as follows:

a) It cannot be gainsaid that there is any delay as the writ petitioner has duly responded to Section 148 IT Act notice and more importantly, the writ petitioner has not responded to not one, but two notices under Section 142(1) of IT Act;

b) Personal hearing is not statutorily imperative in all cases and it is no argument to say that personal hearing has not been given;

c) As the writ petitioner has not responded to Section 142 (1) notices, the question of draft Assessment Order does not arise and therefore, that argument pales into insignificance;

d) GKN Driveshafts principle has not been given a go by as reasons for re-opening have been duly given by way of an annexure to first of the 142(1) notices, namely notice dated 25.08.2021. Learned Revenue counsel submitted that as many as four reasons have been adumbrated therein in the first Section 142(1) notice.

6. By way of rejoinder, learned counsel for writ petitioner besides reiterating his opening submissions, submitted that 142 (1) notices were never served on the writ petitioner and therefore, a notice which is not served on the noticee is no notice in the eye of law.

7. This Court carefully considered the rival submissions. This Court is of the considered view that the entire matter now turns heavily on GKN Driveshafts principle. Therefore, this Court deems it appropriate to extract and reproduce relevant paragraph from GKN Driveshafts case law. Relevant paragraph is paragraph 5 and the same reads as follows:

> ' 5.We see no justifiable reason to interfere with the order under challenge. However, we clarify that when a notice under Section 148 of the Income Tax Act is issued, the proper course of action for the noticee is to file return and if he so desires, to seek reasons for issuing notices. The assessing officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the noticee is entitled to file objections to issuance of notice and the assessing officer is bound to dispose of the same by passing a speaking order. In the instant case, as the reasons have been disclosed in these proceedings, the assessing officer has to dispose of the objections, if filed, by passing a speaking order, before proceeding with the assessment in respect of the abovesaid five assessment years.'

8. To be noted, GKN Driveshafts case law is a oft-quoted case law, but owing to its immense relevance qua the case on hand, the relevant paragraph has been extracted and reproduced supra. It is further to be noted that GKN Driveshafts principle is a legal mechanism that has been put in place by Hon'ble Supreme Court outside of the statute i.e., IT Act balancing the

rights of the Assessee and Revenue. Therefore, GKN Driveshafts principle is as good as a codified part of the IT Act. There is no disputation on this obtaining position.

9. In the light of the aforementioned obtaining legal position, in the case on hand, in response to the 27.03.2019 notice under Section 148 of IT Act (which was served on the writ petitioner physically on 26.04.2019), the writ petitioner has sent a reply dated 17.05.2019 specifically asking for reasons for re-opening. The respondent should have sent the reasons by following the GKN Driveshafts principle independent of Section 142(1) notice. If the writ petitioner has chosen to send the objections, the same should have been considered and an order which has now to come to stay as 'speaking order' in the Revenue litigation parlance ought to have been made. In other words, it cannot be rolled into and made a part of notice under Section 142(1). To be noted, though captioned Annexure, in the case on hand it is merely reverse of the first Section 142(1) notice and in any event even an Annexure forms part of the notice.

10. In the considered view of this Court, this is an infraction of GKN Driveshafts principle and this infraction by itself becomes an infarction qua the impugned order. Therefore, it is not necessary to go into the other point that were urged by writ petitioner. In the considered view of this Court GKN Driveshafts principle is not just a procedure, but it is a principle and therefore, it has to be followed not just in letter, but in letter and spirit.

11. In the light of the discussion and dispositive reasoning set out supra, this Court is of the considered view that this is a fit case to send the matter back to the respondent after effacing/ setting aside all proceedings post 148 notice dated 27.03.2019 and writ petitioner's reply to the same dated 17.05.2019 for redoing the assessment from Section 148 notice stage i.e., notice dated 27.03.2019.

12. Captioned writ petition is disposed of by making the following order:

a) Impugned order being order dated 21.09.2021 bearing reference ITBA/AST/S/147/2021-22/1035753108(1) is set aside solely on the ground that GKN Driveshafts principle has not been followed in letter and spirit by the respondent;

b) All proceedings between 17.05.2019 reply of writ petitioner upto the impugned order including two notices under Section 142(1) are also set aside;

c) In the light of the directives qua aforementioned two limbs, though obvious it is made clear that this Court has not expressed any opinion or view on the merits of the matter;

d) The respondent take into account the writ petitioner's reply dated 17.05.2019 i.e., reply to 27.03.2019 notice under Section 148 of IT Act on the merits of the returns / facts of the case taking into account response of the writ petitioner by following the process of law, proceed therefrom and complete the assessment as expeditiously as the business of the respondent would permit and in any event within eight weeks from today i.e., on or before 23.12.2021.

Captioned writ petition is disposed of with the above directives. Consequently, WMP is also disposed of as closed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

gpa/nst

To

The Additional/Joint/Deputy
Assistant Commissioner of Income Tax/
Income Tax Officer
National Faceless Assessment Cricle
Delhi.

+1cc to Mr.Arun Karthik Mohan, Advocate, S.R.No.55948

W.P.No.22984 of 2021 &
WMP.No.24190 of 2021

AKII(CO)
PM/18/11/2021