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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.07.2021

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.19871 of 2012

M/s.Consolidated Construction
Consortium Limited,
No.3, Second Link Street,
CIT Colony, Chennai 600 004.

..Petitioner

Vs.

1. The Commissioner of Income Tax,
Chennai -1,
Room No.701, 7th Floor,
New Block,
121, Mahatma Gandhi Road,
Nungambakkam,
Chennai 600 034.
2. The Assistant Commissioner of Income Tax,
Company Circle I (3),
6th Floor, New Block,
Income Tax Department,
121, Mahatma Gandhi Road,
Nungambakkam,
Chennai 600 034.
3. The Deputy Commissioner of Income-Tax,
Company Circle I (3), 121, M.G. Road,
Chennai 600 034.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent to quash the impugned notice dated 27.01.2012 issued in terms of Section 148 of the Income Tax Act, 1961 on the assumption of jurisdiction u/s 147 of the said Income Tax Act, 1961 for framing re-assessment for the Assessment Year 2006-07 in PAN AAACC4214B and consequential interim order/letter No.Co.Cir.I (3)/2012-13 dated 29.06.2012 of the 3rd respondent herein and further direct the 2nd respondent to drop the proceedings initiated under 147 of the Act for the said assessment year 2006-07.



For Petitioner : Mr.S.Sridhar

For Respondents : Mr.D.Prabhumukunth Arunkumar
(Standing Counsel)

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ORDER

The petitioner is a Company incorporated under the Companies Act, 1956, with the main object to carry on the business of undertaking construction contracts and such other activities prescribed in Memorandum and Articles of Association dated 24.06.1997. The facts in brief to be considered are that the assessment order under Section 143 (3) of the Income Tax Act, 1961 (hereinafter referred to as, 'the Act') was passed on 29.12.2008, by the Assessing Officer, for the Assessment Year 2006-2007. The learned Counsel for the petitioner contended that the Return of Income filed along with the details, books of accounts and informations, were considered elaborately by the Assessing Officer and a final assessment order was passed. Even thereafter, a revision order was passed under Section 263 of the Act. The petitioner had gone up to the Income Tax Appellate Tribunal and the Tribunal passed an order on 24.05.2011. Thus, even certain left out issues were adjudicated at that point of time and therefore, there is no reason for reopening of assessment beyond the period of four years.

2. Notice under Section 148 of the Act was issued on 27.01.2012 and the petitioner filed its objections. W.P.No.6513 of 2012 was filed by the petitioner, challenging the reopening proceedings as well as the notice under Section 148 of the Act and the Writ Petition was disposed of with a direction to consider the proviso clause to Section 147 of the Act. Pursuant to the final order, hearing notice was issued by the 2nd respondent on 21.06.2012. The petitioner submitted its written submissions/reply and a second written submission/reply was also passed. Despite the fact that the petitioner is able to establish that the reasons furnished cannot be construed as a new materials/tangible material and the reopening of assessment is based on change of opinion, the respondents issued an impugned order, rejecting the objections filed by the petitioner. Thus, the petitioner is constrained to move the present Writ Petition.

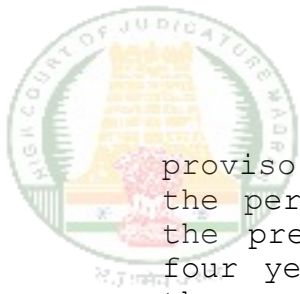
3. The learned counsel for the petitioner reiterated that there is no fresh materials available for the purpose of reopening of assessment, beyond the period of four years. In the present case, the petitioner has submitted all the books of accounts, statements, etc., at the time of reopening assessment and during subsequent proceedings. Thus, the reopening of



proceedings are not falling under the scope of proviso clause under Section 147 of the Act and thus, the impugned rejection order is to be set aside. The learned counsel for the petitioner emphasised that reopening of assessment beyond four years must be done strictly in consonance with the proviso clause and in order to establish the conditions, the authority competent must have tangible material. Thus, in the absence of any such material available on record, reopening of assessment is untenable and in violation of the proviso clause to Section 147 of the Act.

4.The learned Standing Counsel appearing on behalf of the respondents disputed the said contention by stating that the reason for reopening of assessment was communicated. The retention money of Rs.1,27,94,910/- cannot be allowed as expenditure since it is contingent in nature. The issue has been elaborately discussed and the expenditure allowed in the order u/s. 143(3) for the Assessment Year 2009-10. Therefore, the assessment order passed for the Assessment Year 2009-10 provided a cause for reopening of assessment, as certain informations were not fully and truly disclosed by the assessee with reference to the Assessment Year 2006-07. When the Assessing Officer has reason to believe that the informations provided by the assessee was not full and true, then he is empowered to reopen the assessment and all other materials, if any available with the petitioner, has to be submitted before the Assessing Officer, for completion of the re-assessment procedures. Contrarily, such a factual adjudication of these factors are not preferable in the present Writ Petition.

5.Considering the arguments as advanced by the respective learned counsels appearing on behalf of the parties to the lis, this Court is of the considered opinion that scope of interference during the interregnum period when the reopening of assessment is undertaken, must be in consonance with the provisions of the Act, by the Courts. Routine intervention is not desirable. However, the Court must ensure that the reasons furnished are satisfied with reference to the ingredients contemplated under the Act. The provision contemplates reopening of assessment within four years and beyond four years, but within six years. If the reopening of assessment is made within four years, the scope is much wider and beyond four years, but within six years, certain conditions are stipulated in the proviso clause to Section 147. Accordingly, any income chargeable to taxes escaped assessment for such Assessment Year have reason of failure on the part of the assessee, but made a return under Section 139 or in response to a notice under Section (1) or Section 142 or Section 148 or discloses fully and truly all the material facts necessary for assessment for the Assessment Year. Therefore, circumstances are prescribed in the



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proviso clause for the purpose of reopening of assessment beyond the period of four years, but within six years. Admittedly, in the present case, the reopening is made beyond the period of four years and within a period of six years. In furtherance of the proviso clause to Section 147, explanations 1 and 2 are also relevant to consider the circumstances narrated in the proviso clause to Section 147. Incidentally, if the Assessing Officer forms an opinion that the assessee has not disclosed the materials fully and truly, as required, then, he is empowered to reopen the assessment, beyond the period of four years. Even in such circumstances, the materials, informations relied on is to be in consonance with the other ingredients contemplated under the Act for the purpose of reopening of assessment. In this regard, explanation 1 to Section 147 contemplates that production before the Assessing Officer of account books or other evidence from which material evidence could with due diligence have been discovered, the Assessing Officer, will not necessarily amount to disclosure within the meaning of the foregoing proviso. Therefore, even in case where the assessee had submitted all the books of accounts or other evidences, then also, there is a possibility of reopening of assessment, on the ground that the Assessing Officer could able to cull out more informations from the books of accounts and evidences produced by the assessee and said informations discovered are fresh and tangible and has reason to believe that the income chargeable to tax escaped assessment.

6. Further instances are also contemplated. Explanation 2 Sub clause (c) contemplated where an assessment has been made, but - (i) income chargeable to tax has been under assessed; or (ii) such income has been assessed at too low a rate; or (iii) such income has been made the subject of excessive relief under the Income Tax Act; or (iv) excessive loss or depreciation allowance or any other allowance under the Income Tax Act has been computed. Therefore, numerous circumstances are contemplated under the provisions of the Act, providing scope of reopening of assessment, as the very purpose and object of reopening of assessment is to ensure that the income chargeable to tax, which escaped assessment, must be brought under the tax net by following the provisions of the Income Tax Act.

7. The Return of Income filed by the assessee at the first instance is accepted in the normal circumstances. The assessment orders are passed based on the Return of Income filed by the assessee. Therefore, the act contemplates reopening of assessment in cases where the Assessing Officer could able to form an opinion and has reason to believe that the income chargeable to tax escaped assessment. The 3rd phase of Chapter-XIV, procedure contemplated under the Income Tax Act, is the search operations and set of procedures contemplated. Therefore,



the scheme of the Act unambiguously provides various opportunities to the assessee to settle the disputes, omissions, commissions, if any occurred at the stage of return of income, by the assessee. The Return of Income is nothing but voluntary informations provided by the assessee. The Income Tax Act trusts the informations provided by the assessee under the Return of Income. Only if any doubt arises or materials are identified or informations are gathered, then only, the Income Tax Act contemplates reopening of assessment and thereafter, search operations. Therefore, the assessee is expected to settle the issues, by providing information truly and fully. A citizen is expected to be law abiding and only if any breach is identified, then only, actions are initiated and not otherwise. Thus, the scope and scheme of act is vibrant enough to ensure that the income chargeable to tax are not allowed to escape from the assessment. Therefore, the assessee is to be provided with the opportunities contemplated and if still they are not cooperative in settling the issues in accordance with the provisions of the Act and based on the informations and materials, then they are bound to face the consequences.

8. In the present case, the opportunities provided under the Act were availed of by the petitioner. They have submitted objections. The objections were considered. Reason for reopening is also furnished and in the rejection order impugned, the authorities have categorically stated "therefore, it is clear that this treatment to be given on the retention monies held back by the assessee company from its contracts, but claimed as expenditure by debiting it fully in the P/L account, there had been no true disclosure of material facts by the assessee either in the return of income, annual reports, disclosures, audit reports, memo of total income, neither has the Assessing Officer sought them, nor has the assessee during the course of scrutiny proceedings volunteered to produce them". The Assessing Officer found that due to the failure on the part of the assessee and non-disclosure of certain facts fully and truly, the reopening proceeding were necessitated and accordingly, the objections raised by the petitioner for reopening are rejected.

9. This Court is of the considered opinion that intricacies of non-disclosure of certain informations, materials, fully and truly, cannot be gone into by the High Court. In other words, the High Court has to ensure whether the mandatory condition of reason to believe is satisfied or not. However, the sufficiency of the reasons cannot be gone into by the High Court in a writ proceedings. The provisions of the Act enumerates mainly the reason to believe and the findings provided to form such an opinion, which are the material factors to be considered. Therefore, the High Court has to scrutinise the reasons and the reasons are sufficient enough to meet out the requirements as



contemplated under the Act. Other aspects, on merits, are to be adjudicated by the Assessing Officer and High Court is not expected to adjudicate the disputed facts with reference to the accounting system followed or the materials which all are to be adjudicated with reference to the documents and evidences. This being the factum and the principles to be followed, this Court has no hesitation in forming an opinion that the petitioner is bound to cooperate for the completion of reopening of assessment proceedings initiated under Section 147 of the Act, by producing all the relevant materials and documents and the authorities competent are expected to complete the process by affording opportunity to the writ petitioner, as contemplated and as expeditiously as possible.

10. The learned counsel for the petitioner made a submission that the reason for reopening of assessment is the assessment order passed for the Assessment Year 2009-10. However, the said assessment order was reversed by the Income Tax Appellate Tribunal in its order dated 06.01.2016. Therefore, the reasons furnished for reopening of assessment is not in existence as of now and therefore, the authorities cannot proceed further. This Court is of the considered opinion that the order of the Tribunal, its findings, as well as the applicability with reference to the materials produced and informations regarding the Return of Income for the Assessment Year 2006-07 all to be considered by the competent authorities and this Court cannot go into those merits and demerits and it is for the petitioner to establish the same before the Assessing Officer, by availing the opportunities to be provided for the purpose of completion of re-assessment proceedings.

With these observations, the Writ Petition stands dismissed.

s/d-
Assistant Registrar

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Sub-Assistant Registrar

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To

1. The Commissioner of Income Tax,
Chennai -1,
Room No.701, 7th Floor,
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Chennai 600 034.



2. The Assistant Commissioner of Income Tax,
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Chennai 600 034.

+1 CC to M/s. Hema Muralikrishnan, Advocate sr 33881.

W.P.No.19871 of 2012

JPL(CO)
SP(10/08/2021)