IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :23.06.2021

CORAM

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

W.P.No.22850 of 2017
and
W.M.P.Nos.24018 to 24020 of 2017

Cholamandalam Investment and Finance Company Ltd.,
I Floor, Dare House,
NSC Bose Road,
Parry, Chennai - 600 001.
Through its Authorized Signatory
Mr.D.Arul Selvam ...Petitioner

Vs

Deputy Commissioner of Income-Tax,
Corporate Circle - 1 (2),
121, Mahatma Gandhi Road,
Aaykar Bhavan, Wanaparthy Block, 6th Floor,
Chennai - 600 034. ... Respondent

PRAYER : Petition filed Under Article 226 of the Constitution of India to issue of Writ of Certiorarified Mandamus, calling for the records comprised in the notice bearing ITBA/AST/S/148/2016-17/1003823852 (1) DATED 31.03.2017 issued by the respondent and all proceedings in furtherance thereof, including but not limited to order PAN: AAACC1226H/AY 2012 - 13, dated 14.07.2017 passed by the respondent, and quashing the same being arbitrary, illegal and without jurisdiction and to consequently restrain the respondent from proceeding with reassessment against the petitioner for the assessment year 2012 - 13.

For Petitioner : Mr.Arijitchakravarthy
for M/s.Arun Karthik Mohan

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

O R D E R

The writ on hand is filed challenging the reopening proceedings initiated under Section 147 of the Act and the order dated 14.07.2017 passed by the respondent disposing of the objections filed by the writ petitioner.

2. The writ petitioner is a non-deposit accepting non-banking finance Company registered with the Reserve Bank of India and has its registered office in Chennai. It is engaged in asset based financing business such as vehicle finance, home loans, home equity loans etc. The petitioner filed its return of income for the Assessment Year 2012 - 2013, declaring total income and it was selected for scrutiny and an order of Assessment was passed under Section 143 (3) of the Act, in proceedings dated 18.03.2015. The respondent, thereafter issued the impugned notice dated 31.03.2017 under Section 148 of the Income Tax Act, seeking to reopen the assessment of the petitioner for the Assessment Year 2012 - 13. Admittedly, the reopening proceedings are initiated within a period of four years from the end of relevant Assessment Year. The respondent through letter dated 17.04.2017, furnished reasons for reopening of assessment of the petitioner:

- The first reason relates to excess depreciation claim on strong room etc.
- The second reason is excess depreciation claim on motor vehicles on hire.
- The third reason is excess claim of lease equalization charge.
- The fourth reason is loss on hedging transactions not regarded as speculative in nature.

3. In response, the petitioner submitted its detailed objections to drop the proceedings initiated under Section 147 of the Act. The petitioner has mainly contended that the reopening of assessment is based on change of opinion and there is no tangible material available on record to invoke the powers under Section 147 of the Act. The petitioner furnished all the details, account books etc., fully and truly at the time of original assessment and the Assessment Officer scrutinized all these aspects, which forms a reason for reopening the assessment and passed the final Assessment Order which became final. Thus, the reopening of assessment is nothing but change of opinion and the initiation does not comply with the requirements as contemplated under Section 147 of the Act.

4. The learned Senior Counsel appearing on behalf of the writ petitioner mainly contended that the objections in detail submitted by the writ petitioner, drop off further proceedings on initiation of reopening proceedings, were not considered nor findings are given. Thus, the order impugned disposing of the objections is non-speaking and on that ground also, the impugned order is liable to be set aside.

5. The learned Senior Counsel relied on the judgments of the Hon'ble Supreme Court and the High Courts, stating that

the objections submitted by the assessee is to be considered meaningfully and mere disposal of objections is insufficient. While disposing of the objections, the Competent Authority is expected to deal with the objections with reference to the facts, materials available on record and the principles laid down by the Courts. In the present case, the impugned order disposing of the objections is nothing but extraction of the provisions and certain judgments of the Courts and the objections with reference to various heads furnished, are not even dealt with by the Assessing Officer and therefore, the impugned order is non-speaking and is liable to be set aside.

6. The learned Standing Counsel appearing on behalf of the respondent objected the said contention by stating that the reopening of assessment is not change of opinion. The learned Standing Counsel referred the reasons furnished for reopening in proceedings dated 17.04.2017. It is contended that there was an excess depreciation claim on motor vehicles on hire and certain structures were claimed as temporary, which all are not actually temporary, so as to fall under particular category. The learned Standing Counsel referred the reasonings furnished by the respondent and stated that there are materials available on record for reopening of assessment and further the reopening proceedings are initiated within a period of four years. Therefore, the scope is wider and thus, there is no infirmity in respect of the reopening proceedings with reference to the impugned order disposing of the objections. The respondent is unable to establish that all the objections submitted by the writ petitioner are dealt with by the respondent and findings are given with reference to the said objections made. Perusal of the order impugned would reveals that the detailed objections with reference to certain facts furnished by the assessee based on the reasons furnished by the Department are not dealt with and thus, this Court is of an opinion that the case is to be remanded back for fresh consideration with reference to the objections filed by the petitioner / assessee.

7. Undoubtedly, it is a case falling within a period of four years and the scope of reopening of assessment is wider, if the Assessing Officer has reason to believe any income chargeable to tax has escaped assessment, then he is empowered to initiate reopening proceedings. Further the explanation 1 & 2 enumerates that mere production of account books or other evidences are insufficient and even those books of accounts are produced by the assessee, the Competent Authority could able to draw certain inferences or omissions or commissions. Explanation 2 (c) provides various circumstances under which reopening of assessment is permissible, even where an assessment has been made, then also reopening proceedings are permissible. Thus, mere production of materials, books of accounts etc., alone is

not the deciding factor for assailing the reopening proceedings, various factors and circumstances are to be considered. However, the reasons are furnished to the petitioner by the respondent. The petitioner also submitted its detailed objections for drop off the proceedings. The impugned order disposing of the objections are lacking findings with reference to the objections raised by the petitioner, more specifically, with reference to certain transactions. Thereafter, if the Authority forms an opinion that it is a case for reopening of assessment, then they are bound to proceed further.

8. This being the factum established, this Court is of an opinion that the case is to be remanded back for reconsideration and for passing an order of disposal of the objections submitted by the writ petitioner. Accordingly, the impugned order passed by the respondent in proceedings PAN : AAACC1226H/AY 2012 - 13, dated 14.07.2017 is set aside.

9. The respondent is directed to dispose of the objections filed by the writ petitioner afresh on merits and in accordance with law and by affording opportunity to the writ petitioner to file further objections, if any or otherwise.

10. The petitioner is permitted to file their original objections and further objections, if any, within a period of two weeks from the date of receipt of a copy of this order. The respondent is directed to dispose of the objections on merits and in accordance with law within a period of 12 weeks from the date of receipt of a copy of this order. Thereafter, the respondent has to proceed further in accordance with law, if required.

11. With these directions, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Pns
To

The Deputy Commissioner of Income-Tax,
Corporate Circle – 1 (2),
121, Mahatma Gandhi Road,
Aaykar Bhavan, Wanaparthy Block, 6th Floor,
Chennai – 600 034.

+1cc to Mr.Arun Karthik Mohan, Advocate Sr.29128
+1cc to Mr.Hema Muralikrishnan, Advocate Sr.29271

W.P.No.22850 of 2017
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srg 23/08/2021