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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.07.2021

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THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

W.P.No.24688 of 2017
and
W.M.P.No.26050 of 2017

M/s.Chennai Network Infrastructure Ltd.,
Rep., by its Chief Financial officer,
Old No.34/1, New No.403L, 7th Floor,
Samson Tower, Pantheon Road,
Egmore, Chennai-600 008.

.. Petitioner

-vs-

1. Assistant Commissioner of Income-tax,
Corporate Circle-1(2), Room No.613,
6th Floor, Wanaparthi Block,
121, Mahatma Gandhi Road, Chennai-600 034.
2. Assistant Commissioner of Income-tax (OSD),
Corporate Range-1, Room No.603,
6th Floor, Wanaparthi Block,
121, Mahatma Gandhi Road, Chennai-600 034.
3. Principal Commissioner of Income-tax-1,
Room No.701, VII Floor, New Block 121,
Mahatma Gandhi Road, Chennai-600 034.
4. Union of India, Through the Secretary,
Department of Revenue,
Ministry of Finance, Government of India,
Block, New Delhi-110 001.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records of the 2nd respondent in the impugned order dated 1st August, 2017 and quash the same.

For Petitioner : Mr.P.S.Raman, Senior Counsel
assisted by
Mr.Aparajitha Vishwanath

For Respondents : Ms.Hema Muralikrishnan,
Senior Standing Counsel



ORDER

The lis on hand is filed challenging the order dated 01.08.2017 passed by the second respondent, disposing of the objections filed by the petitioner, pursuant to the initiation of reopening proceedings under Section 147 of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

2.The petitioner is a company registered under the Companies Act, 1956 and is engaged in the business of providing shareable passive infrastructure facilities to various telecom/mobile operator companies. Regarding the business operation of the petitioner, there is no serious dispute between the parties to the lis on hand.

3.The learned Senior Counsel appearing on behalf of the writ petitioner mainly contended that the very initiation of reopening proceedings under Section 147 of the Act, beyond the period of four years in the absence of any tangible material, is unsustainable. Proviso clause to Section 147 of the Act unambiguously enumerates that in the event of reopening the assessment beyond the period of four years, the Assessing Officer must have reason to believe that there was suppression or the assessee had not fully and truly disclosed the income. This being the mandatory requirement for reopening of assessment beyond the period of four years, the said element is absent, as far as the case of the petitioner is concerned and thus, the impugned order is liable to be set aside.

4.The learned Senior Counsel solicited the attention of this Court with reference to the materials produced by the assessee before passing the original order of assessment. In the present case, it is not a routine assessment, but a scrutiny assessment. The petitioner filed its return of income with all relevant details, informations along with the books of accounts etc. It was taken up for scrutiny assessment and a notice was issued under Section 142(1) of the Act by the Assessing Officer on 13.08.2012. The petitioner responded to the notice by furnishing all required details sought for in the notice dated 13.08.2012 on 14.09.2012. The petitioner filed details of interest received on 30.10.2012. Further, the details regarding the pre-operative expenses were also furnished to the Assessing Officer on 08.11.2012. Justification for adjustment of interest against pre-operative expenses was also furnished. Considering all these documents as well as the informations and details provided by the assessee, the Assessing Officer passed the final order of assessment on 14.03.2013 for the assessment year 2010-11.



5.The learned Senior Counsel referring to the return of income filed by the petitioner, the details of tax deducted at source on income and the list of companies furnished by the Assessing Officer for reopening of the assessment, contended that the details now relied on by the Department for reopening of the assessment as well as the details furnished by the petitioner during the pre-assessment order are one and the same and therefore, there is no other reason for reopening the assessment and based on the change of opinion, the reopening of assessment is initiated, which is impermissible and thus, the case of the petitioner is to be allowed.

6.The learned Senior Counsel referred to the letter of the assessee dated 30.10.2012 and elaborated that the details of loan and interest of loan for Rs.4,500 Crores were furnished to the Assistant Commissioner of Income Tax, Company Circle-1(3), Nungambakkam, and those particulars were also considered by the Assessing Officer while passing the final assessment order. When all the particulars, details as well as the transaction, interest portion etc., were furnished in detail by the assessee while filing return of income and during the course of scrutiny assessment, the very same details are relied on by the Assessing Officer for the purpose of reopening the proceedings under Section 147 of the Act, that is, beyond the period of four years and therefore, the case of the Revenue is not in consonance with the pre-conditions contemplated under the Proviso clause to Section 147. It is contended that the details sought for by the petitioner were not given. Thus, there is a denial of opportunity to defend the case. For all these reasons, the impugned order, disposing of the objections, as well as the initiation, are to be set aside.

7.The learned Senior Standing Counsel appearing on behalf of the respondents disputed the contentions raised on behalf of the petitioner by stating that the details and the list of companies as well as the informations provided by the assessee to the Assessing Officer before passing the original assessment order as well as the reasons for reopening of assessment are not one and the same. In order to substantiate the said contention, the reasons furnished by the Assessing Officer for reopening of assessment in proceedings dated 05.05.2017 are referred to and the reasons are as follows:-

“Information has been gathered that the assessee company during the period 19-20-2010 to 17.03.2010, had made payments to the tune of Rs.814.95 crores to 27 private limited companies and one limited company. These entities were not genuinely engaged in the business of sale of software. Not only the purchases made the



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assessee company but also the depreciation claimed will have to be disallowed and considered for tax incidence. The concerned assessment year is 2010-11 only.

Based on the above I have reason to believe that income has escaped from assessment for A.Y.2010-11."

8.Relying on the said reasons, the learned Senior Standing Counsel reiterated that it is a new information gathered by the Assessing Officer, after passing of the assessment order dated 14.03.2013 for the assessment year 2010-11. It is stated that the information has been gathered at the assessee-company and it was found that their entities were not genuinely engaged in the business of sale of software. Not only the purchases made by the assessee-company but also the depreciation claimed will have to be disallowed and considered for tax incidence. With reference to the informations gathered and the reason given that the entities were not genuinely engaged in the business of sale of software, the Assessing Officer invoked the provisions of Section 147 of the Act. The informations gathered are new tangible materials and therefore, an assessment/re-assessment is to be made. When it is a new material, which was not adjudicated and such material was suppressed by the assessee at the time of passing of the original assessment order, then the Assessing Officer has reason to believe for reopening of assessment under Section 147 of the Act.

9.The learned Senior Standing Counsel referred to the proceedings of the Assessing Officer dated 13.07.2017 wherein, he has stated the request for list of parties with whom alleged transactions have been made. Names of 28 companies are provided along with the amount paid by the assessee. However, the learned Senior Counsel disputed the said list by stating that the names of the said companies, numbering 28, were furnished by the petitioner themselves while scrutiny assessment and more specifically, at the time of filing of the return of income itself. However, the learned Senior Standing Counsel disputed the same by stating that those details, given in the return of income, pertain to details of tax deducted at source on income. Even though the names of the company are one and the same, the informations received regarding the genuinity of the entities and the business of sale of software have to be gone into, as those informations are gathered by the Income Tax Department. In this regard, the learned Senior Standing Counsel relied on Explanation 1 to Section 147 of the Act wherein, the Act contemplates 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. Thus, furnishing of certain informations, books of accounts etc., by the assessee, at the time of filing of return of income, alone is not the deciding factor for reopening of assessment under Section 147 of the Act and even in respect of the same books of accounts or details, if there are new material, suppression or the assessee has not truly and fully disclosed the income, then also re-assessment shall be done by the Assessing Officer under the Proviso clause to Section 147 of the Act.

10. It is contended that there is a dispute with reference to the details and books of accounts as well as the informations gathered by the Assessing Officer and notice under Section 148 of the Act was issued and the Department has followed the directives of the Hon'ble Supreme Court of India in the case of GKN Driveshafts (India) Ltd. vs. Income-tax Officer reported in (2003) 259 ITR 19(SC). Reasons were furnished. The assessee submitted its objections and the said objections were disposed of. Thus, the Assessing officer may be allowed to proceed further for assessment/re-assessment and the assessee has to cooperate and if at all any other documents are available, it is for them to produce the same before the Assessing Officer and thus, the writ petition is liable to be dismissed.

11. Considering the arguments as advanced on behalf of the respective parties to the lis on hand, this Court is of the opinion that the scope of Section 147 under the Act is wider enough to cover various circumstances under which reopening of assessment shall be done by the authority competent. As rightly pointed out by the learned Senior Counsel for the petitioner, within four years and beyond four years, there is a distinction. Within four years, the Assessing Officer, if has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, can reopen the assessment. However, beyond the period of four years, certain conditions are to be fulfilled.

12. Proviso to Section 147 of the Act contemplates that where an assessment under sub-Section (3) of Section 143 or Section 147 has been made for the relevant assessment year, no action shall be taken under Section 147 after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under Section 139 or in response to a notice issued under sub-Section (1) of Section 142 or Section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year. The Proviso clause reveals that certain conditions are to be fulfilled for the purpose of reopening of assessment beyond the period of four



years. In case, no return of income is filed under Section 139 beyond the period of four years, reopening shall be done. However, in the present case, the learned Senior Standing Counsel relied on the fact that new informations were gathered and the genuinity of business transactions are also questioned by the Assessing Officer. Thus, the Assessing Officer has reason to believe that the assessee failed to disclose fully and truly all material facts necessary for his assessment.

13.The very intention of the provision is to ensure that even in cases where there was an omission or commission or by mistake certain particulars or details were not given by the assessee at the time of original assessment, after reopening of the assessment, the assessee shall produce all those documents, which were omitted, left out as well as the informations. Thus, the provision do not doubt about the integrity of an assessee under Section 147 unless a contrary is established by the Assessing Officer. Unlike the third phase of Chapter XIV of the Act wherein such operation results in initiation of proceedings under Section 153A or 153C of the Act, Section 147 provides an opportunity for the assessee to furnish further details, books of accounts or otherwise in the event of any income chargeable to tax has escaped assessment for any assessment year. The language employed in the proviso clause is that the assessee failed to disclose fully and truly. In case, the assessee has not furnished the informations fully, the non-submission of those informations fully may result on account of certain omission or mistake or otherwise. However, the word "truly" would indicate that there is some suppression. Thus, even in the said two circumstances, the assessee gets an opportunity to furnish the details or clarify the position or defend their case by availing the opportunities to be provided by the Assessing Officer while passing an order of assessment/re-assessment.

14.This Court is of the considered opinion that the facts disputed cannot be gone into by the High Court in a Writ proceedings under Article 226 of the Constitution of India, which is to be done with reference to the documents as well as the evidences made available before the competent authority.

15.The learned Senior Counsel for the petitioner relied on the informations provided by the assessee in the return of income as well as the details provided in the subsequent letters by the assessee. However, those informations are disputed by the respondents by stating that the information has been gathered and the entities were not genuinely engaged in the business of sale of software. The reasons were responded by the assessee by submitting objections. The said objections were also considered by the Assessing Officer and the same were disposed of vide order dated 01.08.2017. Perusal of the said



order would reveal that the objections filed by the assessee are summarised broadly and the said objections were considered in elaborate. The Assessing Officer while disposing of the objections filed by the petitioner, made the following findings:-

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"8. In the case of the assessee company, the assessee has failed to disclose the facts relevant to the assessment of the assessee company. At the time of reopening of assessment, the Assessing Officer has obtained information on the parties with whom the assessee company has had financial transactions. It has been reliably gathered by the Assessing Officer that such parties were in fact bogus entities. The assessee has not disclosed any detail of such parties at the time of original scrutiny. Such fact has been brought to light by means of an investigation undertaken by the Department and this has not been disclosed by the assessee company. Till date the assessee company has not disclosed the relationship or association of the assessee with the bogus entities nor the objective of such transactions. Therefore, it is evidence that the assessee has failed to fully and truly disclose all material facts necessary for the assessment of the assessee company for the relevant Assessment Year. The points of objection raised by the assessee in Point Numbers 2, 3 and 4 of para 2 thereby becomes factually redundant because the tenets of change of opinion or absence of new information is not relevant in this case due to the existence of new information.

9.

10. An examination of the assessment records of the assessment originally made reveals that where the reason given for effecting reassessment were not the matters considered by the assessing authority while passing assessment order. The point of dispute at the time of original assessment was whether the interest earned by the assessee adjusted against prior period expenses were to be considered as Income from other sources or not. The Assessing Officer has neither verified the genuineness of such transactions nor the genuineness of such parties. Therefore, since no opinion was formed in this regard, the contention that no new material have been brought to light to invoke the power and



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proceedings under Section 147 or that it is proposed by way of 'change of opinion' is not relevant. Mere production of books of accounts by assessee before Assessing Officer, cannot lead to the presumption that all books have been perused and examined by the Assessing Authority. It is duty of assessee to show all relevant particulars in books of accounts, not mere production of books, arguments that Assessing Officer could have been discovered is not correct as held in the case of Kantamaneni Venkatnarayana by Hon'ble Supreme Court 63 ITR 638."

16.The Assessing Officer has dealt with the objections raised by the petitioner that the reopening of proceedings beyond the period of four years is without jurisdiction.

17.Considering the findings given in the order disposing of the objections, this Court is of the opinion that assessment/re-assessment is to be completed by following the procedures contemplated. The scope of judicial review under Article 226 of the Constitution of India is to scrutinise the processes through which the decision is taken by the competent authority by following the procedures as contemplated under law, but not the decision itself. In the present case, the directives issued by the Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd. (supra) have been followed and the assessee was given opportunity to submit their objections and the petitioner had rightly availed the opportunity and the said objections were also considered and disposed of by the authorities. The reasons furnished for reopening of assessment as well as the findings made in the order disposing of the objections are in the opinion of this Court is candid and convincing and therefore, there is no other reason to interfere with the order impugned in this writ petition and consequently, the writ petition fails and stands dismissed. No costs. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

abr



To

1. The Assistant Commissioner of Income-tax,
Corporate Circle-1(2), Room No.613,
6th Floor, Wanaparthi Block,
121, Mahatma Gandhi Road, Chennai-600 034.
2. The Assistant Commissioner of Income-tax (OSD),
Corporate Range-1, Room No.603, 6th Floor, Wanaparthi Block,
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3. The Principal Commissioner of Income-tax-1,
Room No.701, VII Floor, New Block 121,
Mahatma Gandhi Road, Chennai-600 034.
4. The Secretary,
Union of India, Department of Revenue,
Ministry of Finance, Government of India,
Block, New Delhi-110 001.

+1cc to Ms.Hema Muralikrishnan,, Advocate, S.R.No.30781
+2ccs to Mr.Abishek Jenasenar, Advocate, S.R.No.30788

W.P.No.24688 of 2017

UM(CO)
BE(28/07/2021)