IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.07.2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.33438 of 2019
and W.M.P.Nos.33904, 33913 & 33915 of 2019
and W.M.P.No.11822 of 2021
&
W.P.No.33449 of 2019
and W.M.P.Nos.33920, 33922 & 33924 of 2019
and W.M.P.No.11825 of 2021

Dr.Sajan Hegde ..Petitioner in both W.Ps.

Vs.

The Assistant Commissioner of Income Tax,
Non-Corporate Circle-3(1),
Chennai 600 034. ..Respondent in both W.Ps.

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent contained in its notice issued under Section 148 of the Income Tax Act, 1961, for PAN: AAAPH6758C, dated 15.03.2019, for Assessment Years 2015-16 & 2016-17 respectively, and all proceedings in furtherance thereof, including the impugned proceedings under Section 147 of the Income Tax Act, 1961, dated 07.11.2019, bearing ITBA/AST/F.17/2019-20/1019892075(1) in PAN: AAAPH6758C, dismissing the petitioner's objections dated 12.06.2019 to the reopening of income tax assessment for the Assessment Years 2015-16 & 2016-17 respectively, and to quash the same as arbitrary, unjust and illegal.

(In both W.Ps.)
For Petitioner : Mr.Suhrith Parthasarathy

For Respondent : Ms.Hema Murali Krishnan
(Senior Standing Counsel for Income Tax)

COMMON ORDER

The Writ Petitions on hand are filed challenging the notice issues under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as, 'the Act') and the order dated 07.11.2019, disposing of the objections filed by the writ petitioner, regarding the reopening of assessment under Section 147 of the Act. The petitioner is an individual Assessee. The petitioner is an Ortho-Pediatricians and Top Spine Surgeon of substantial reputation attached to Apollo Hospital, Greams Road, Chennai. He is regularly filing Income Tax Returns in accordance with law. The petitioner filed his Return of Income for the Assessment Years 2015-16 and 2016-17. The Return of Income was processed under Section 143 (1) of the Act and a final order of assessment was passed. Surprisingly, the petitioner received a notice dated 15.03.2019, issued under Section 148 of the Act, for reopening of the assessment for the Assessment Years 2015-16 and 2016-17 respectively, on the ground that income chargeable to tax has escaped assessment within the meaning of Section 147 of the Act. The petitioner submitted his reply to the notices, confirming the filed Return of Income. The petitioner requested for reasons for reopening of assessment. The reasons were furnished to the petitioner by respondent in proceeding dated 10.06.2019. On receipt of the reasons, the petitioner filed his objections in detail on 12.06.2019 and the said objections were not considered and rejected in the impugned proceedings dated 07.11.2019. Thus, the petitioner is constrained to file these Writ Petitions.

2.The learned counsel appearing for the petitioner, even at his opening arguments, contended that it is suffice if the matter is remanded back by setting aside the order disposing of the objections passed by the respondent. The learned counsel for the petitioner, to substantiate his confinement of relief to remand the matter back to the Assessing Officer, relied upon the reasons furnished for reopening of assessment as well as the show cause notice issued on 28.11.2017 in respect of the Assessment Years 2011-12, 2012-13 and 2013-14. In the said show cause notice issued for the Assessment Year 2011-12, the Assessing officer has stated as follows:

> ""You were a consulting Doctor practicing at Apollo Hospital, Chennai during the previous year relevant to A.Y.2011-12. Your chambers at Apollo Hospital were leased out from the same hospital. The said hospital also maintained on its computerized systems the details of the patients you have seen during the relevant previous year. The said details have been obtained from the said Hospital in pursuance of the statement of Ms.Subhadra G., Manager (Operations), Apollo Hospital, recorded on 5th January 2016 (copy enclosed). The details of your fee structure too have been obtained similarly. These are as follows,
>
> Fee per First Visit/New Patient-Rs.700/-
>
> Fee per old patient/Follow up-Rs.700/-
>
> From the above details it would become clear that your income from consultation fees from your Apollo Hospital Practice would be Rs.20,20,900/-.

However, after going through your return of income for the relevant assessment year, it is observed that the income returned on this count is substantially less. You are required to show cause as to why your income from consultation fees from your Apollo Hospital Practice as quantified above should not be brought to tax in your hands. Your reply should reach the undersigned within fifteen days from the date of receipt of this show cause notice."

3.The learned counsel for the petitioner has stated that the said show cause notice indicates the statement of Ms.Subhadra G., Manager (Operations), Apollo Hospital, recorded on 5th January 2016 (copy enclosed). However, there was no enclosure communicated along with the show cause notice to the writ petitioner. Thereafter, the petitioner submitted several letters seeking the copy of the statement of the said Ms.Subhadra G., Manager (Operations), Apollo Hospital, and the said statement was furnished belatedly, after disposing of the objections filed by the petitioner. Therefore, the petitioner had no opportunity to submit detailed objections with reference to the statement of the said Ms.Subhadra G., Manager (Operations), Apollo Hospital.

4.Secondly, the learned counsel for the petitioner relied on the order passed by the Commissioner of Income Tax (Appeals), in the case of Dr.Pichai Suryanarayan. It is contended that the case of said Dr.Pichai Suryanarayan is also similar, wherein the Commissioner of Income Tax (Appeals) allowed the appeal filed by the assessee, with an observation that the Assessing Officer has not applied her mind independently on the facts and circumstances of the case and without forming legitimate reasons to believe, which is the pre-requisite for issue of notice under Section 148 of the Act and has only relied on the statement of Ms.Subhadra G., Manager (Operations), Apollo Hospital, to reopen all the impugned assessments by issue of impugned notices under Section 148 for all three Assessment Years. The learned counsel for the writ petitioner further relied on the findings made in the order passed by the Commissioner, Income Tax (Appeals) and contended that he may be given an opportunity to submit objections in detail with reference to the statement of Ms.Subhadra G., Manager (Operations), Apollo Hospital, as well as the findings of the Commissioner, Income Tax (Appeals), made in the order dated 20.08.2019, in the case of Dr.Pichai Suryanarayan.

5.The learned counsel for the petitioner reiterated that beyond the merits of the case on hand, the petitioner has to be given an opportunity to submit a detailed objections and such objections to be considered and a fresh order to be passed, disposing of the objections. In this regard, the order impugned is to be quashed.

6.The learned Senior Standing Counsel appearing on behalf of the respondent objected the said contention by stating that remand would result in multiplicity of proceedings and it will give further scope for developing litigation in the present case. The respondent-Assessing Officer has scrupulously followed the directives of the Hon'ble Supreme Court in the case of GKN Drive shafts India Ltd., Vs. ITO reported in 259 ITR 19 (SC) as well as the provisions of the Income Tax Act for reopening of assessment. Thus, if at all any objections are to be filed, still it is left open to the petitioner to submit the same and what is under challenge in these Writ Petitions is only reopening of assessment and the assessment order is yet to be passed. Thus, the petitioner, even at this stage, has got ample opportunity to submit his objections with reference to the findings of the order passed by the Commissioner, Income Tax (Appeals) as well as with reference to the statement of said Ms.Subhadra G., Manager (Operations), Apollo Hospital. Contrarily, if the order impugned is quashed, it will pave way for the litigants to create further litigations unnecessarily and the opportunity for submitting further objections are still open and further, no prejudice would be caused, in the event of filing any such objection at this stage.

7.The learned Senior Standing Counsel reiterated that the Assessing Officer has reason to believe that the income chargeable to tax escaped assessment. Consequent to the search operations in Apollo Hospitals, various informations and details were collected and based on the informations and details, reopening proceedings are initiated. Thus, there is no infirmity as such in respect of initiation of proceedings under Section 147/148 of the Act.

8.Regarding the non-furnishing of the copy of the statement of Ms.Subhadra G., Manager (Operations), Apollo Hospital, the learned Senior Standing Counsel solicited the attention of this Court with reference to the show cause notice which was relied upon by the petitioner, wherein admittedly, the statement of Ms.Subhadra G., Manager (Operations), Apollo Hospital, recorded on 05$^{th}$ January, 2016 (copy enclosed) has been stated. If at all the copy was not enclosed along with the show cause notice dated 28.11.2018, any prudent assessee would immediately respond to the show cause notice by stating that they have not received the copy of the statement, as stated in the show cause notice. On receipt of the show cause notice, the assessee, through their Chartered Accountants, sent a letter to the Assessing Officer on 1$^{st}$ December, 2018. Interestingly, in the said letter, the petitioner has not made any such complaint or request to furnish the copy of statement of said Ms.Subhadra G., Manager (Operations), Apollo Hospital, which was not enclosed in the show cause notice dated 28.11.2018. However, subsequently, the petitioner made a request on 06th December, 2018, through his Chartered Accountants. It is not in dispute that after disposing of the objection, the copy of the said statement was furnished to the assessee through his authorized representative and the copy of the said statement is enclosed along with the typed set of papers filed in the present Writ Petitions.

9.Considering the arguments as advanced by the respective parties to the lis on hand, this Court is of the considered opinion that the scope of reopening of assessment under Section 147 of the Act are well enumerated and the requirements, pre-conditions as well as the procedures to be followed are also unambiguous. The point to be considered is that whether the reopening of assessment is done in accordance with the procedures contemplated and by complying with the mandatory requirements.

10.In the present case, admittedly, the assessee filed his Return of Income. Notice under Section 148 of the Act was issued. The assessee requested for reasons. Reasons furnished. Thereafter, he filed his objections for the reasons and the said objections were also disposed of. Thus, the directives of the Hon'ble Apex Court in the case of GKN Drive shafts India Ltd., Vs. ITO (cited supra) was also followed by the respondent-Assessing Officer.

11.The petitioner had requested for further details and he has submitted his objections to the reasons. With reference to the said reply, show cause notice was also issued to the petitioner in respect of the Assessment Years 2011-12, 2012-13 and 2013-14. However, the statement of Ms.Subhadra G., was subsequently handed over to the representative of the petitioner and the same was acknowledged.

12.The objections submitted were disposed of by the competent authority on 07.11.2019 and the concluding findings of the Assessing Officer regarding the objections in the said orders read as under:

Assessment Year 2015-16:

> "8.The assessee objected that merely relying on hospital records which indicate number of patients 'who visited' is incorrect.
>
> The Assessing officer has not arrived at the income escaping assessment relating to the A.Y.2015-16, merely based on the number of patients mentioned against the Col. 'who visited',

in the Apollo Hospital records. It is clearly deliberated in the para.6, supra as well as in the reasons for reopening, that as to how the number of patients from whom consultation fee was collected by the doctor was arrived at, after excluding the number of patients who are not liable to pay fees. In the instant case, for the A.Y.2015-16, though the total number of patients consulted by the assessee doctor during the financial year under consideration was 3799 (New patient 1888 no., follow-up patient 1515 No.MHC 341 No. and Credit patients 55 No.), total income from consultation fee from consultation in Apollo Hospitals, was arrived at, after excluding the consultation fee relating to 341 no. of the Master Health Check patient and 55 no. of credit patients viz., patients who are not liable to pay consultation fees. The above action of the Assessing Officer shows the rationale of the proceedings initiated u/s.147. Hence, assessee's objection to this effect is baseless.”

Assessment Year 2016-17:

“8.The assessee objected that merely relying on hospital records which indicate number of patients 'who visited' is incorrect.

The Assessing officer has not arrived at the income escaping assessment relating to the A.Y.2016-17, merely based on the number of patients mentioned against the Col. 'who visited', in the Apollo Hospital records. It is clearly deliberated in the para.6, supra as well as in the reasons for reopening, that as to how the number of patients from whom consultation fee was collected by the doctor was arrived at, after excluding the number of patients who are not liable to pay fees. In the instant case, for the A.Y.2016-17, though the total number of patients consulted by the assessee doctor during the financial year under consideration was 3033 (New patient 1503 no., follow-up patient 1039 No.MHC 50 Nos. and Credit patients 441 No.), total consultation fees from consultation in Apollo Hospitals, was arrived at after excluding the consultation fee relating to 50 no. of the Master Health Check patient and 441 no. of credit patients viz., patients who are not liable to pay consultation fees. The above action of the Assessing Officer shows the rationale of the proceedings initiated u/s.147. Hence, assessee's objection to this effect is baseless.”

13.The reasons for reopening of assessment is made clear to the assessee by the respondent. The objections submitted by the assessee was also considered by the respondent and a speaking order was passed. While disposing of the objections, the Assessing Officer has categorically stated that he has reason to believe that the income chargeable to tax escaped assessment. The findings extracted in the aforementioned paragraphs would reveal that the reasons for reopening is candid and convincing. Thus, there is no reason, what so ever, for interfering with the initiation of reopening proceedings under Section 147 of the Act.

14.Let us now consider the request made by the petitioner to remand the matter back to the Assessing Officer for fresh disposal of the objections by providing an opportunity to the petitioner to submit additional objections, based on the statement of Ms.Subhadra G., Manager (Operations), Apollo Hospital and the order passed by the Commissioner of Income Tax (Appeals).

15.What is under challenge in the present Writ Petitions is the initiation of reopening proceedings under Section 147 of the Act. Chapter XIV of the Income Tax Act provides procedures to be followed. If the Assessing Officer has reason to believe that any income chargeable to taxes has escaped assessment and if it is within 4 years, he is empowered to reopen the assessment. If it is beyond 4 years and within 6 years, certain conditions are stipulated for reopening under 1st proviso to Section 147 of the Act. Explanation I and II to Section 147 of the Act contemplates various circumstances under which reopening of proceedings shall be under taken by the competent authority.

16.On initiation of reopening proceedings, notice is to be issued, where income has escaped assessment under Section 148 of the Act. Section 149 contemplates time limit for notice. Time limit for completion of assessment, re-assessment and re-computation are also contemplated under Section 153 of the Act. Section 151 of the Act stipulates sanction for issue of notice. Thus, various procedures are contemplated and mere initiation is one aspect of the matter and the assessment/re-assessment is to be made by the Assessing Officer, is the further proceedings to be followed.

17.The Writ Petitions are filed questioning the initiation of proceedings under Section 147/148 of the Act, for reopening of assessment. Undoubtedly, the assessee must be provided with an opportunity to defend his case, in accordance with law, and at the first stage, on issuance of notice, the procedures to be followed are settled by the judgment of the Hon'ble Supreme

Court of India in the case of GKN Drive shafts India Ltd., Vs. ITO (cited supra). However, in the present case, the petitioner states that the copy of the statement of Ms.Subhadra G., Manager (Operations), Apollo Hospital was not enclosed along with the show cause notice issued. The learned Senior Standing Counsel pointed out that even presuming it was not enclosed, the petitioner has not sought for the copy immediately and even, in the letter sent subsequently by the petitioner, there is no mentioning regarding furnishing of the said statement. Thus, the very statement that the enclosure was not available along with the show cause notice cannot be trusted upon. However, the said statement of Ms.Subhadra G., Manager (Operations), Apollo Hospital was subsequently handed over to the authorized representative of the petitioner. The petitioner seeks further opportunity to submit elaborate objections. This Court is of the considered opinion that in the event of quashing the initiation proceedings and providing an opportunity to submit further objections, it would cause prejudice to the revenue. Contrarily, the petitioner may be permitted to submit all his further objections based on the statement of Ms.Subhadra G., Manager (Operations), Apollo Hospital, enabling the Assessment Officer to consider the same and accordingly, proceed with the assessment/re-assessment, based on the reopening of assessment proceedings. Thus, instead of quashing the entire proceedings, as prayed for in the present Writ Petitions, it is suffice if an opportunity is provided to the writ petitioner to submit additional objections, if any, based on the materials relied on by the assessee to the Assessing Officer, withing a stipulated period and on receipt of the same, the Assessing Officer shall be permitted to proceed with the assessment/re-assessment. This being the factum established, the petitioner is directed to submit his further objections along with the materials, documents, etc., to the respondent within a period of two weeks from the date of receipt of a copy of this order. On receipt of any such objections from the writ petitioner, the respondent shall consider the same along with the process of assessment/re-assessment by providing an opportunity to the writ petitioner. In the event of not receiving any such objection within a period of three weeks, the respondent is at liberty to proceed further for assessment/re-assessment and complete the exercise as expeditiously as possible.

18.With these directions, the Writ Petitions stand disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

gsa

To
The Assistant Commissioner of Income Tax,
Non-Corporate Circle-3(1), Chennai 600 034.

+2ccs to Mr.Arun Karathik Mohan, Advocate SR.No. 30994
+1cc to Mrs.Hema Murali Krishnan, Advocate SR.No. 31057

W.P.Nos.33438 & 33439 of 2019

AK II(CO)
B.VC(26.07.2021)