IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.Nos.30450 & 33943 of 2018
W.M.P.Nos.39407, 35519 & 35521 of 2018

M/s.GE T&D India Limited
(Formerly Known as Alstom T&D India Limited)
19/1, IOC Building,
GST Road, Pallavaram
Chennai-600 043. .. Petitioner in W.P.No.30450 of 2018

M/s.GE T&D India Limited
(Formerly Known as Alstom T&D India Limited)
Rep.by its authorised Signatory
Mr.Sivaramakrishnan Sundararaman
19/1, IOC Building,
GST Road, Pallavaram
Chennai-600 043. .. Petitioner in W.P.No.33943 of 2018

vs.

1. Deputy Commissioner of Income Tax,
Large Tax Payer Unit-1,
7th Floor, New Block,
121, Mahatma Gandhi Road,
Chennai-600 034. .. R1 in W.P.No.30450 of 2018

2.Joint Commissioner of Income Tax
Large Tax Payer Unit-1,
7th Floor, New Block,
121, Mahatma Gandhi Road,
Chennai-600 034. .. R2 in W.P.No.30450 of 2018

3.Assistant Commissioner of Income Tax,
Large Tax Payer Unit-1,
7th Floor, New Block,
121, Mahatma Gandhi Road,
Chennai-600 034. .. Respondent in W.P.No.33943 of 2018

PRAYER in W.P.No.30450 of 2018 : Writ Petition filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari, to call for the records on the file of the first respondent and quash the impugned order in LTU1/AAACG2115R/2018-19 dated 18.09.2018 along with notice in PAN: AAACG2115R dated 29.03.2018 in notice number ITBA/AST/S/148/2017-18/1009529791(1) issued under Section 148 of the Income Tax Act for the assessment year 2013-14.

PRAYER in W.P.No.33943 of 2018 : Writ Petition filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari, to call for the records on the file of the respondent and quash the impugned order in PAN: AAACG2115R dated 19.11.2018 passed under Section 143(3) read with Section 147 of the Income Tax Act for the assessment year 2013-14.

In both W.P's

For Petitioner :Mr.N.V.Balaji

For Respondent :Mr.Hema Murali Krishnan
Senior Standing Counsel (IT)

C O M M O N O R D E R

The writ petition in W.P.No.30450 of 2018 is filed challenging the notice issued under Section 148 of the Income Tax Act in proceedings dated 29.03.2018 as well as the order of disposal of the objections for reopening of the assessment issued by the Authority in proceedings dated 18.09.2018 are under challenge.

2. The writ petition in W.P.No.33943 of 2018 is filed challenging the assessment order dated 19.11.2018 passed pursuant to the reopening of the assessment initiated under Section 147 of the Act.

3. The petitioner is a listed Company incorporated on 13.03.1957 and is engaged in the business of manufacturing of heavy electrical equipment and executes projects involving transmission and distribution of power and other turnkey projects.

4. The learned counsel appearing for the petitioner, with reference to the issues, contended that the initiation of proceedings under Section 147 of the Income Tax Act itself is untenable, in view of the fact that there is no element of reason to believe as mandated under Section 147 and the notice under Section 148 of the Act was issued based on change of opinion. In order to substantiate the said contention, the learned counsel appearing for the petitioner solicited the

attention of this Court with reference to return of income filed by the petitioner for the assessment year 2013-14 and the consequential assessment order passed by the Assessing Officer after considering all the facts and circumstances. Pertinently, the learned counsel appearing for the petitioner referred the income by way of capital gains with reference to sale of Perungudi Property. The details are provided at the time of original assessment itself. The facts and figures are not disputed by the Assessment Officer while scrutinizing. This apart, the capital gains tax was also given in the Notes to the Financial Statements and the said portion reads as under:

> During the year, the Company sold certain immovable properties. Capital gains tax on such sale has been provided based on the actual sales consideration as per the sale deed. The Registering Authority has not accepted the value as per the sale deed and is in the process of fixing the appropriate value for these properties for the purpose of stamp duty. Pending such determination, the actual sale consideration is treated as the market value of the properties. The Company has also obtained a valuation report from a professional valuer for the subject properties and the same is comparable with the actual sale consideration.

5. Based on the informations as well as the details provided by the petitioner, the Assessing Officer issued a question seeking certain clarification. The petitioner, in detail, furnished all the informations as well as the clarification sought for by the Assessing Officer in letter dated 26.10.2016. In the said letter, the petitioner has categorically stated with reference to the details and documents relating to Purchase and Sale of Perungudi land which reads as under:

> 28.Details and documents relating to Purchase and Sale of Perungudi land:-
>
> The sale deed for the sale of Perungudi land is given as Annexure 7 to this submission.
>
> Out of the total sale consideration of Rs.22,36,07,844 received, we wish to submit that Rs.1,69,82,069 attributable to buildings is reduced as from the block of "Buildings" (please refer Appendix 3 to Form 3CD). The balance sale consideration of Rs.20,66,25,775 is considered for computing capital gains on sale of land. The Asset register for purchase of the land is enclosed as Annexure 8 to this submission.

6. Further, the petitioner has provided the details regarding the sale of fixed asset. Considering all such facts

and circumstances as well as the clarifications and additional details provided by the petitioner/assessee, the Assessing Officer passed the final order of assessment under Section 143 (3) read with 92CA of the Income Tax Act on 19.12.2016. The original order of assessment passed by the Assessing Officer is self-contained which would speak that the petitioner/assessee had furnished all the details and informations as well as the documents which are all relevant for the purpose of assessment.

7. When the matter stood like that, the reopening proceedings are initiated under Section 147 of the Act based on audit objections. The learned counsel appearing for the petitioner contended that the audit objection, which is extracted in the order providing reason for reopening of the assessment, itself is untenable as all such factual details raised in the reopening order had been dealt with by the Assessing Officer in the original assessment order. A specific finding was given. Thus, the very initiation of proceedings under Section 147 of the Act is without jurisdiction and untenable. The element of reason to believe contemplated under the provision is missing. Thus, the entire exercise is to be construed as non-est in law.

8. Regarding the principles to be followed with reference to Section 147, the learned counsel appearing for the petitioner reiterated that only if there is a reason to believe as established by the Department, then alone, the proceedings under Section 147 can be sustained and not otherwise. Mere suspicion is insufficient to institute the reopening proceedings under Section 147 of the Act. The suspicion, if supported with new materials, then alone, the proceedings can be initiated. When the material facts as well as the documents regarding the sale properties were furnished by the assessee and the Assessing Officer also taken into consideration, scrutinized the same and passed final assessment order, then any other initiation based on some materials would be nothing but change of opinion and not the reason to believe.

9. The learned counsel appearing for the respondent disputed the contention raised on behalf of the petitioner in entirety by stating that it is not change of opinion as pleaded by the petitioner. There are materials and informations made available for reopening of the assessment. The learned Senior Standing Counsel made a submission that the fact regarding the appeal filed by the purchaser of the property from the petitioner under Section 47A of the Indian Stamp Act regarding the payment of stamp duty has not been informed to the Department. This apart, the sale deed which is necessary was also not produced to remove the duty in this aspect. Thus, there are new materials available on record and further, it is contended that the audit objections, if provides a new information or materials, then the

same would constitute a valid ground for the purpose of initiation of reopening proceedings under Section 147 of the Act. In the present case, the reason for reopening stated in order dated 06.07.2018, would reveal that the Assessee Company has sold the land and the building comprised in three documents. It is evident from the Notes to the Financial Statements (48 Capital Gains Tax), wherein it is stated that "the Registering Authority has not accepted the value as per the sale deed and is in the process of fixing the appropriate value for these properties for the purpose of stamp duty. Hence, it is evident that the property is undervalued". The details regarding undervaluation of the documents registered are also considered by the Authority. Further, the order speaks that as per Section 50C of the Income Tax Act, the value of the land would be Rs.77,73,62,250/-. However, the assessee had shown sale consideration of the land as Rs.20,66,25,775/- only. If this is considered, the Long Term Captial Gain would be Rs.75,69,88,005/- and difference in Long Term Capital Gain to be offered to tax is Rs.57,07,36,475/- as detailed hereunder:

	Rs
Total Sale value to be considered as per Section 50C	77,73,62,250/-
Indexed cost of acquisition	2,03,74,245/-
Long Term Capital Gain to be assessed	75,69,88,005/-
LTCG Offered by assessee	18,62,51,530/-
Difference in LTCG	57,07,36,475/-

10. In view of difference in LTCG amounting to Rs.57,07,36,475/-, the Assessing Officer reopened the assessment as there is a reason to believe that the income chargeable to tax has escaped assessment.

11. This Court is of the considered opinion that the sale consideration shown by the assesee in the return of income for the assessment year 2013-14 is not disputed. The document registered, which is now in appeal under Section 147A of the Indian Stamps Act is also not in dispute. Thus, the market value as stated in the document is disputed and the actual market value and the stamp duty paid is also in dispute. Thus, the disputes are providing new material facts and informations to the Income Tax Department for reopening of the assessment. The manner in which the sale deed was valued by the assessee and the stamp duty paid at the time of registration as well as the appeal filed under Section 47A of the Indian Stamp Act and the actual market value prevailing during the relevant point of time with reference to the subject property, provides new information

and an additional material, which were not considered by the Assessing Officer at the time of original assessment. Thus, the said factors would be new material for the purpose of reopening of assessment. Thus, the reopening of the assessment by the Assessing Officer is in consonance with the provisions of Section 147 and no further inference is required from the hands of this Court.

12. Though all these grounds raised in W.P.No.30450 of 2018 challenging the notice issued under Section 148 of the Act as well as the disposal of objections raised by the assessee for reopening of assessment, the Department had proceeded further and passed assessment order under Section 143(3) read with 147 of the Income Tax Act in proceedings dated 19.11.2018. As far as the said assessment order is concerned, this Court is of the considered opinion that the petitioner has to prefer an appeal under Section 246A of the Act.

13. When an appellate remedy is provided in respect of the final order of the assessment passed by the Competent Authority, the assessee must exhaust the said appellate remedy. Therefore, the petitioner is at liberty to approach the Appellate Authority under Section 246A of the Act in respect of final assessment order passed by the Assessing Officer in impugned proceedings dated 19.11.2018, as far as W.P.No.33943 of 2018 is concerned.

14. In respect of W.P.No.30450 of 2018 is concerned, this Court has elaborately considered the ground for reopening of assessment under Section 147 of the Act. Therefore, the said ground is not made available to the petitioner as this Court is of the opinion that the initiation of 147 proceedings is in consonance with the provisions of the Act. Therefore, there is no perversity or infirmity. Thus, the petitioner is at liberty to prefer an appeal under Section 246A of the Act in order to redress any further grievance with reference to the final assessment order passed in the impugned proceedings dated 19.11.2018 within a period of three weeks from the date of receipt of a copy of this Order. In the event of filing any such appeal, the Appellate Authority has to consider the same on merits and in accordance with law and pass appropriate orders and by affording opportunity to the writ petitioner.

15. With these observations, both the writ petitions stand dismissed. No costs. Consequently, connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

ssb

To

1. Deputy Commissioner of Income Tax,
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7th Floor, New Block,
121, Mahatma Gandhi Road,
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Chennai-600 034.

+2cc to Mr.N.V.Balaji, Advocate, S.R.No.25895,25896
+2cc to Ms.Hema Muralikrishnan, Advocate, S.R.No.25476,25477

W.P.Nos.30450 & 33943 of 2018

VG-II(CO)
CB(18/06/2021)