

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16-04-2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP No.33896 of 2018
And
WMP No.39352 of 2018

M/s.DRS Industries Private Limited,
Represented by its Director,
Mr.D.Shivakumar, age 42,
Flat No.1D, Gowtham Maple,
Hindustan Avenue,
Udayampalayam Road,
Coimbatore-641 028.

.. Petitioner

VS.

1.Tax Deputy Commissioner of Income Tax,
Central Circle-1,
Main Building,
63, Race Course Road,
Coimbatore-641 018.

2.Assistant Commissioner of Income Tax,
Central Circle-1,
Main Building,
63, Race Course Road,
Coimbatore-641 018.

.. Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records of the second respondent and quash the impugned notice under Section 148 of the Act in PAN:AABCD0553B dated 31.07.2017 and the consequential impugned order of the first respondent dated 07.11.2018 for the Assessment Year 2011-2012.

For Petitioner : Mr.R.Sandeep Bagmar

For Respondents : Mr.A.P.Srinivas,
Senior Panel Counsel.

ORDER

The notice issued under Section 148 of the Income Tax Act (hereinafter referred to as the 'Act' in short) in proceedings dated 31.07.2017 and the consequential order passed by the first respondent on 07.11.2018 for the Assessment Year 2011-2012, are under challenge in the present writ petition.

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2. Learned counsel appearing on behalf of the writ petitioner mainly contended that the reopening of assessment is made without

jurisdiction and in the absence of any tangible evidence with reference to the provisions of the Act. Thus, the reopening of assessment is based on change of opinion and therefore, the order impugned is liable to be set aside.

3. The petitioner states that the Assessment Year was taken by way of an appeal before the ITAT and the ITAT also passed an order on 03.02.2017 with reference to the Assessment Year 2011-2012 and therefore, the issues were already concluded and the respondents now cannot sit on appeal in respect of the order passed by the ITAT and reopening of assessment was already concluded. Thus, the reasons furnished in the order impugned is nothing but change of opinion and not based on any new material, suppression of material or otherwise as required under the Statute for reopening of assessment.

4. Learned counsel for the petitioner solicited the attention of this Court with reference to the grounds of appeal filed by the Income Tax Department before the Income Tax Appellate Tribunal. Referring the said grounds, it is contended that the grounds raised and the issues

adjudicated are one and the same as far as the reasons stated in the impugned order of reopening of assessment and there is no other new material empowering the Authorities Competent to issue notice under Section 148 of the Income Tax Act.

5. Learned counsel for the petitioner relied on the Third Proviso to Section 147 of the Income Tax Act, wherein the Assessing Officer may assess or reassess such income, other than the income involving matters which are the subject matters of any appeal reference or revision, which is chargeable to tax and has escaped assessment.

6. In the present case, admittedly, the assessment has been made and an appeal was filed before the ITAT and the ITAT also dismissed the appeal and subsequent miscellaneous petition filed by the Income Tax Department was also dismissed by the Tribunal. Thus, the issues were concluded and the Income Tax Department also not filed any further appeal. Thus, thereafter, there is no jurisdiction to reopen the assessment already made.

7. Contrarily, the respondents are sitting on appeal with reference to the order passed by the ITAT, which is impermissible. In the absence of any tangible evidence, the power of reopening of assessment, cannot be made and thus, the findings, in this regard, in the impugned order are perverse.

8. In support of the said contention, the learned counsel for the petitioner referred to various judgments of the Hon'ble Supreme Court of India and the High Courts, more specifically in the case of **Income Tax Officer vs. Techspan India Private Ltd and Another [(2018) 404 ITR 10 (SC)]**, wherein the Supreme Court in paragraphs 2 and 13 held as under:-

“2. Brief facts

(a) M/s TechSpan India Pvt. Ltd., the respondent is a private limited company incorporated under the Companies Act, 1956 and is engaged in the business of development and export of computer softwares and human resource services. It is also relevant to mention here that the respondent Company is also

eligible for deduction under Section 10-A of the IT Act.

(b) On 25-10-2001, the respondent filed its return of income for Assessment Year (AY) 2001-02 declaring a loss of Rs 3,31,301. The respondent, while filing the return for the aforementioned period, has declared its income from two sources, namely, software development and human resource development but claimed expenses commonly for both. It also claimed deduction under Section 10-A of the IT Act for the income from the software development. The said return was accepted and accordingly intimated to the respondent.

(c) The return was selected for regular assessment under Section 143(3) of the IT Act and a show-cause notice dated 9-3-2004 was issued to the respondent to show cause as to why the expenses claimed with regard to the allocation of common expenses between the two heads viz. software development and human resource development do not reveal any basis for such allocation. The issue was duly contested and decided vide order dated 29-11-2004 and the

proceedings ended with a rectification of the assessment order under Section 154 of the IT Act while arriving at an income of Rs 31,63,570 which was fully set-off against the loss brought forward and the income was assessed as “nil” for Assessment Year 2001-2002.

(d) Further, on 10-2-2005, a notice was served upon the respondent by the Revenue for reopening the assessment under Section 148 on the ground that the deduction under Section 10-A of the IT Act has been allowed in excess and the income which escaped assessment works out to Rs 57,36,811 in the original assessment. The respondent filed a detailed reply objecting to the reassessment. However, by order dated 17-8-2005, the objections were rejected and reassessment was approved by the Revenue.

(e) Being aggrieved, the respondent challenged the above said show-cause notice dated 10-2-2005 as well as the order dated 17-8-2005 before the High Court by filing Writ Petition (C) No. 14376 of 2005. Vide judgment and order dated 24-2-2006 [*Techspan India (P) Ltd. v. CIT*, 2006 SCC OnLine Del 1754 : (2006)]

283 ITR 212] , the High Court set aside the show-cause notice dated 10-2-2005 as well as the reassessment order dated 17-8-2005.

(f) Being aggrieved, the Revenue has filed this appeal before this Court.”

13. The fact in controversy in this case is with regard to the deduction under Section 10-A of the IT Act which was allegedly allowed in excess. The show-cause notice dated 10-2-2005 reflects the ground for reassessment in the present case, that is, the deduction allowed in excess under Section 10-A and, therefore, the income has escaped assessment to the tune of Rs 57,36,811. In the order in question dated 17-8-2005, the reason purportedly given for rejecting the objections was that the assessee was not maintaining any separate books of accounts for the two categories i.e. software development and human resource development, on which it has declared income separately. However, a bare perusal of notice dated 9-3-2004 which was issued in the original assessment proceedings under Section 143 makes it clear that the point on which the reassessment proceedings were

initiated, was well considered in the original proceedings. In fact, the very basis of issuing the show-cause notice dated 9-3-2004 was that the assessee was not maintaining any separate books of account for the said two categories and the details filed do not reveal proportional allocation of common expenses be made to these categories. Even the said show-cause notice suggested how proportional allocation should be done. All these things leads to an unavoidable conclusion that the question as to how and to what extent deduction should be allowed under Section 10-A of the IT Act was well considered in the original assessment proceedings itself. Hence, initiation of the reassessment proceedings under Section 147 by issuing a notice under Section 148 merely because of the fact that now the assessing officer is of the view that the deduction under Section 10-A was allowed in excess, was based on nothing but a change of opinion on the same facts and circumstances which were already in his knowledge even during the original assessment proceedings.”

9. In the case of **Anne Venkata Vishnu Vara Prasad vs. Assistant Commissioner of Income Tax [(2018) 405 ITR 491 (T&AP)]**, the Telangana and Andhra Pradesh High Court, in paragraphs 21 to 27 and 35, observed as under:-

“21. Section 147 deals with ‘Income escaping assessment’. It states to the effect that if the AO has reason to believe that any income chargeable to tax escaped assessment for any assessment year, he may, subject to the provisions of Sections 148 to 153, assess or reassess such income. The first proviso thereto stipulates that where an assessment under Section 143(3) or under 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 Section 142(1) or Section 148 or to disclose fully and truly all material facts necessary for his assessment for that assessment year. The third proviso to Section 147 states that the AO may assess or reassess such income, other than the income involving matters which are the subject matter of any appeal, reference or revision, which is chargeable to tax and has escaped assessment. Section 148 of the Act of 1961 deals with issue of a notice where income has escaped assessment. It states to the effect that before making the assessment, reassessment or recomputation under Section 147, the AO shall serve on the assessee a notice requiring him to furnish within such period, as may be specified, a return of his income. Section 148(2) requires the AO to record his reasons before issuing any notice under Section 148(1). Section 149 of the Act of 1961 is relevant for the purposes of these cases and it stipulates the time limit for the notice under Section 148. Section 149(1)(a) states that no notice under Section 148 shall be issued for the relevant assessment year if four

years have elapsed from the end of the relevant assessment year, unless the case falls under Clause (b) or Clause (c) thereof. Clause (b) covers a situation where four years, but not more than six years, have elapsed from the end of the relevant assessment year, and the income chargeable to tax which has escaped assessment amounts to or is likely to amount to one lakh rupees or more for that year. Clause (c) thereof covers a situation where four years, but not more than sixteen years, have elapsed from the end of the relevant assessment year and the income in relation to any asset located outside India, but chargeable to tax, has escaped assessment. Section 151 stipulates that the notice under Section 148 cannot be issued after expiry of four years unless the Principal Chief Commissioner or Chief Commissioner or Commissioner is satisfied, on the reasons recorded by the AO, that it is a fit case for the issue of such notice.

22. On facts, it is clear that the notices dated 31.03.2017 under Section 148 of the Act of 1961 were issued to the petitioners on the

very last day of the six-year period prescribed under Section 149(1)(a) of the Act of 1961. The reason now put forth by the Revenue to justify this step is that the Investment Agreement dated 12.08.2009 is new found evidence which was suppressed by the petitioners and therefore, it is entitled to the extended limitation of six years from the end of the assessment year 2010-2011.

23. It is however to be noted that the Investment Agreement dated 12.08.2009 already fell for consideration before this Court in the appeals filed by the Revenue under Section 260A of the Act of 1961 against the common order dated 09.12.2016 of the Appellate Tribunal. Sri. K. Raji Reddy, learned senior standing counsel, has no information as to whether any appeals have been preferred therefrom to the Supreme Court. That being so, the orders of dismissal of these appeals filed by the Revenue are binding and it is not open to it to once again seek to re-agitate any issue that stands covered by the said adjudication. As already pointed out, relevance of the Investment Agreement dated 12.08.2009 was

explicitly raised by the Revenue in the said appeals by framing a specific question of law. Despite the same, this Court was not persuaded to agree and confirmed the common order of the Appellate Tribunal holding that the date of transfer of the shares by the petitioners was 24.11.2009, the date on which they submitted declarations in Form No. 7B to the purchaser company. Sri. K. Raji Reddy, learned senior standing counsel, is unable to explain as to how the Revenue can reopen the subject assessments basing on the Investment Agreement dated 12.08.2009, when the Appellate Tribunal as well as this Court, having considered the same, did not accept the Revenue's plea that it constitutes the date of actual transfer.

24. Further, as rightly pointed out by Sri. K.V. Simhadri, learned counsel, reopening of the assessments under Section 147 cannot be resorted to by the AO in relation to income arising out of a matter which was the subject matter of an appeal. When the very basis for reopening of the assessments in the present cases, being the Investment Agreement dated

12.08.2009, was the subject matter of the appeals before the Appellate Tribunal and, thereafter, before this Court, it is not open to the AO to treat the same as the foundation for forming an opinion that income chargeable to tax had escaped assessment in the context thereof.

25. Though Sri. K. Raji Reddy, learned senior standing counsel, would argue that the Commissioner was justified in exercising revisionary power under Section 263 of the Act of 1961, this issue was also the subject matter of the appeals before the Appellate Tribunal and, thereafter, before this Court. Therefore, it does not survive for independent consideration at this stage.

26. The endeavour of the Revenue, as is clear from the arguments of Sri. K. Raji Reddy, learned senior standing counsel, is to cloud and confuse the issues which fell for consideration in those appeals with the reopening of the assessments presently by way of the notices under Section 148 of the Act of 1961. However, these issues are disparate and distinct. Once

the Appellate Tribunal and, thereafter, this Court rendered findings on the issues that fell for consideration in the appeals, it is no longer open to the Revenue to try and rake up the same in these writ petitions.

27. It is also to be noted from the counters that the main ground on which the AO sought to reopen the assessments was that the petitioners had willfully suppressed material facts. However, the petitioners pointed out that there was no such suppression as the Investment Agreement dated 12.08.2009 was produced by the Revenue itself as additional evidence before the Appellate Tribunal and no attempt was made by the Revenue to clarify as to wherefrom they got the said Agreement, if it was not produced by the petitioners. The Appellate Tribunal's order also bears out that the original assessment was made after the AO perused the details furnished by the petitioners, upon being issued show-cause notices dated 13.12.2012 and 28.12.2012 calling for specific details about their share transfers, computation of capital gains and proof of investments to

claim exemptions. The Appellate Tribunal also recorded that the petitioners had filed detailed replies along with supporting documents to justify the exemptions claimed and it was only then, that the AO completed the assessments and accepted the returns. Therefore, in the absence of any clear evidence of actual suppression of the Investment Agreement by the petitioners, the question of the Revenue falling back on this clause in Section 147 does not arise. All the more so, when it seeks to invoke the extended limitation of six years.

35. In the cases on hand, as already stated supra, neither in the notices dated 31.03.2017 nor in the reasons furnished in September/October, 2017, did the AO record the presence of the aforesaid jurisdictional conditions for reopening the subject assessments. Even thereafter, when she rejected the petitioners' objections under her letters dated 17.11.2017, the AO did not do so. Thus, as matters stand, the AO never opined that issue of the subject notices was warranted on the ground that the petitioners did not disclose

fully and truly all material facts necessary for their assessment or that the income that escaped assessment during that year amounted to or was likely to amount to one lakh rupees or more. The absence of these jurisdictional conditions in her reasons for seeking to reopen the assessments beyond four years is fatal to the very issuance of the impugned notices. Trite to state, the reasons communicated by the AO to the petitioners must be the same reasons furnished to the competent authority for seeking approval under Section 151 of the Act of 1961, as the AO cannot modify, add to or delete from such reasons to suit her own purposes at different points of time. Further, when the reasons recorded by the AO are the only material that can be looked into by the competent authority for granting approval under Section 151 of the Act of 1961, the absence of such jurisdictional conditions therein would invariably vitiate the approval, if any, by the competent authority, as he could not have recorded the requisite satisfaction under Section 151 of the Act of 1961, when the

fundamental jurisdictional conditions justifying the reopening of the assessments beyond the normal four-year period did not even find mention in the reasons recorded by the AO.”

10. In the case **Alcatel-Lucent France and Another vs. Assistant Director of Income Tax [(2016) 384 ITR 113 (Delhi)]**, the Delhi High Court, in paragraphs 28 and 36, observed as under:-

“28. The third proviso acts as a restraint on the AO from seeking to reopen an assessment which is itself the subject matter of further scrutiny in an appeal that is pending. In the present case, the orders initiating the reopening of the assessments were passed even when the appeals against the assessment orders were pending either before the CIT(A) or ITAT. The said determination by the AO in the earlier assessment proceedings was, at the time of issuance of the second round of notice under Section 148 of the Act, still the subject matter of the appeal before the CIT(A). In other words, these notices were issued for AYs 2004-05 and 2005-06 on 30th March 2011 and 20th March

2012, whereas, an appeal was pending in respect of the said two years before the CIT(A) as of those dates. The order of the CIT(A) came only on 29th September 2012. As regards AY 2006-07 and 2008-09, the notices under Section 148 of the Act were issued on 28th March 2013 at a stage when the Revenue's appeal against the order of the CIT(A) for the said two AYs was still pending before the ITAT. As already noticed, the decision of the ITAT in those pending appeals was rendered on 4th April 2014. The third proviso to Section 147 of the Act mandates that the AO would not assess or re-assess income "involving matters which are the subject matter of any appeal, reference or revision". This mandate of the third proviso to Section 147, which was inserted with effect from 1st April 2008, appears to have been completely overlooked by the AO when he proceeded to issue the notices under Section 148 of the Act for the above AYs.

36. In fact, in the order rejecting the objections preferred by the ALF, the AO rejects this plea only on the ground that the earlier

orders only made a cursory reference to the issue. This understanding by the AO of what constitutes reasons for reopening an earlier assessment order is both factually and legally erroneous. As long as the earlier assessment order made a reference to an issue, it did not matter, as far as the AO is concerned, whether the reference to it was 'cursory' or otherwise. In fact, as already noticed, it was not cursory. There was a detailed discussion on this aspect. Secondly, the AO failed to appreciate that he could not assume jurisdiction to reopen the assessment when the earlier assessment orders were the subject matter of the appeal. He chose to ignore the third proviso to Section 147, even though it was pointed out by ALF."

11. In the case of **International Flavours and Fragrances India Private Limited vs. Deputy Commissioner of Income Tax (LTU) [(2020) 425 ITR 450 (Mad)]**, this Court, in paragraphs-31 and 34, rendered as follows:-

"31. To invoke Section 148 of the Income

Tax Act, 1961 for the purpose of Proviso to Section 147 of the Income Tax Act, 1961, there should be a case of failure to truly and fully disclose material facts required for the assessment. In this case, I find that there were deliberations on the very issue as to whether the activity undertaken by the petitioner amounted to manufacture or not before the respective assessment orders were passed for the respective assessment years by the respondent's predecessor.

34. The reopening of the assessment to deny the deduction under Section 80-1B of the Act, is therefore without jurisdiction. Therefore, the Proviso to Section 147 of the Income Tax Act, 1961 puts an embargo on the respondent from proceeding further as no action shall be taken under this Section 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 the material facts necessary for his assessment, for that assessment year.”

12. Relying on the above judgments, the learned counsel for the petitioner is of an opinion that the requirements of Statute are not complied with and further the reasons furnished in the order impugned is with reference to the grounds adjudicated before the ITAT based on the Assessment Year, which was passed under Section 143(3) of the Income Tax Act, 1961. Thus, the respondents have not established any new material for the purpose of reopening of the assessment, which is allegedly escaped as per the Income Tax Department and therefore, the present writ petition is to be allowed.

13. Learned counsel for the petitioner further contended with reference to the facts that transfer of property is made in accordance with the provisions, which was accepted by the Assessing Officer, while passing an order of assessment and the said assessment order was confirmed by the ITAT and the appeal filed by the Income Tax Department was dismissed.

14. This being the factum, there is no reason whatsoever to reopen the assessment at this length of time.

15. Learned Senior Panel Counsel, appearing on behalf of the respondents, disputed the said contention of the learned counsel for the petitioner, by stating that, undoubtedly, the reopening of assessment is to be made with reference to the provisions of the Income Tax Act.

16. The reason to believe and the requirements for reopening of assessment are well enumerated under Section 147 of the Income Tax Act. However, in the present case, the petitioner has failed to establish that the reason for reopening is connected with the facts adjudicated originally by the Assessing Officer. Thus, there are new materials available before the Authorities Competent for the purpose of reopening of the assessment and therefore, the writ petition is devoid of merits.

17. The learned Senior Panel Counsel, appearing on behalf

of the respondents, relied on the judgment of the Madras High Court in the case of **Jayaram Paper Mills Ltd vs. Commissioner of Income Tax, Chennai [(2010) 229 CTR 57]**, wherein this Court, in paragraphs-25, 26 and 31, observed as under:-

“25. Thus it is clear that the scope of the deeming fiction which was found in Explanation 1 under Section 147, before its amendment, was enlarged in the form of Explanation 2, by the amendment under Act 4 of 1988. The effect of this deeming fiction did not fall for consideration in any of the decisions that arose even upto Sri Krishna Private Ltd. Therefore, even while keeping in mind the elementary principles laid down in the aforesaid decisions, we may have to apply them to the extent that they are now permissible in view of the Explanation-2.

26. By virtue of Explanation 2-

(i) non-furnishing of return by an assessee, whose total income is above the ceiling limit, will be deemed to be a case of income escaping assessment;

(ii) understatement of income or a claim of excessive loss, deduction, allowance or relief in the

return furnished by the assessee, will also be deemed to be a case of income escaping assessment, in cases where a return is filed but no assessment is made;

(iii) underassessment of income chargeable to tax, assessment of income at too low a rate, grant of excessive relief under the Act to an income and the computation of excessive loss or depreciation allowance or any other allowance, would also be deemed to be a case of income escaping assessment, in cases where an assessment has been made.

31. In any event, the petitioner is only at the threshold. Once it is found that the Assessing Officer had reason to believe that there was income escaping assessment, it is not open to this Court to make a roving enquiry, since the reasons are not justiciable. All that can happen, by allowing the proceedings to continue, is that the Assessing Officer may pass an order of assessment or re-assessment. The petitioner would then have a spate of statutory remedies. Therefore, the case on hand, in my opinion, is not one that warrants interference at this stage.”

18. Relying on the above judgment, the learned Senior Panel Counsel made a submission that understatement of income or a claim of excessive loss, deduction, allowance or relief in the return furnished by the assessee, will also be deemed to be a case of income escaping assessment, in cases where a return is filed but no assessment is made;

19. This apart, the High Court cannot make a roving enquiry in respect of the reasons, which are otherwise based on some materials objects were not scrutinised or adjudicated by the Assessing Officer in the original assessment order.

20. The learned Senior Panel Counsel made a submission that the reopening of the assessment was made strictly complying with the provisions of Section 147 of the Act and the notice was issued by following the procedures contemplated and the reasons also are furnished. The reasons for reopening of assessment with reference to the impugned order, which reads as under:-

“In the return of income filed for the A.Y. 2011-2012, the assessee has debited an amount of Rs.82,49,045/- under the head “Administrative Expenses” towards “share of profit” payable to M/s.Miracle Cars India Pvt Ltd in pursuance to the MOU dated 30/06/2010 entered by the assessee with M/s.Miracle Cars India Pvt Ltd. As per the assessee's own version and confirmed by the CIT(A), this agreement did not fructify due to non receipt of approval from SKODA. The assessee should have offered the amount of Rs.82,49,045/0 claimed under the head “Administrative Expenses” for taxation.”

21. The objections raised by the writ petitioner was considered by the Deputy Commissioner of Income Tax and even in the objection, the writ petitioner has raised all these contentions.

22. The order dated 07.11.2018 issued by the Deputy Commissioner of Income Tax, disposing of the objections raised against the initiation of action under Section 147 of the Act, reveals that the issue

involved in the original assessment under Section 143(3) of the Act and the reasons for reopening of assessment under Section 147 of the Act, are different. The details regarding the difference is stated as follows:-

“During the course of assessment proceedings it was observed that the assessee has entered into an MOU dated 30.06.2010 with M/s.Miracle Cars India Pvt Ltd., relating to transfer of its units called “Millennium Motors” along with the SKODA car dealership license for Rs.3 crores. The transaction done as per the agreement was taken by the AO as slump sale and the assessment order was passed under Section 143(3) on 31.03.2014 after making an addition of Rs.3,00,00,000/- towards disallowance of the slump sale. The assessee had gone on appeal before the CIT(A)-18, Chennai against the above addition. During the course of appellate proceeding before the CIT(A), the assessee submitted a MOU dated 22.11.2014 entered into between DRS Industries (P) Ltd and Miracle Cars India (P) Ltd in which it was observed by the CIT(A) that M/s.SKODA has rejected the request made for transfer of dealership raising legal

issues. The CIT(Appeals) has allowed the appeal of the assessee and deleted the addition made on account of disallowances of slump sale.

In the return of income filed for the A.Y.2011-2012, the assessee had debited an amount of Rs.82,49,045/- under the head “Administrative Expenses” towards “share of profit” payable to M/s.Miracle Cars India Pvt Ltd in pursuance to the MOU dated 30.06.2010 entered by the assessee with M/s.Miracle Cars India Pvt Ltd. As per the assessee's own version and confirmed by the CIT(A), this agreement did not fructify due to non receipt of approval from SKODA. In view of the fact that the agreement did not go through there was no liability on the part of the assessee to pay the share of profit to M/s.Miracle Cars India Pvt Ltd. In the assessment order passed under Section 143(3) on 31.03.2014, the income chargeable to tax has therefore been under assessed to the extent of Rs.82,49,045/-. The case has now been reopened under Section 147 to reassess the income of Rs.82,49,045/0 which has escaped assessment for the AY 2011-2012.”

23. The Deputy Commissioner of Income Tax, in clear terms, formed an opinion that the issue involved during the original assessment was dis-allowance of slump sale and the reasons for reopening of assessment under Section 147 of the Act, was to reassess the income of Rs.82,49,045/-, which has escaped assessment being entirely different.

24. When factually, the Deputy Commissioner of Income Tax formed an opinion by assigning reasons that the issue involved during the original assessment was different from that of the reasons for reopening of assessment, then there is no reason for the High Court to go into the further details by conducting a roving enquiry and it is for the Competent Authorities to adjudicate the issues on merits and by affording opportunity to the writ petitioner in the manner prescribed under the Statute.

25. It is not as if the reopening of the assessment is the final proceedings. It is only an initiation and the petitioner is bound to avail the opportunity to be provided for the purpose of establishing his case with

reference to certain facts and circumstances and by producing documents and evidences.

26. Such an exercise cannot be done by the High Court under Article 226 of the Constitution of India. Thus, once the Competent Authority formed an opinion that the issue involved during the original assessment is unconnected with the reasons for reopening of the assessment under Section 147 of the Act, then the High Court is expected to be slow in interfering with the reopening of the assessment and the authorities must be provided with the opportunity to conduct further adjudications/enquiry by following the procedures contemplated and by affording an opportunity to the assessee and the assessee is also at liberty to establish his case with reference to the evidences available and therefore, this Court is of an opinion that the reasons stated in the impugned order are candid and convincing. There is no violation, as such, in respect of Section 147 of the Income Tax Act and the reasons for reopening of assessment is different with reference to the details furnished in the order dated 07.11.2018 passed by the Deputy Commissioner of Income Tax. Thus, the petitioner is at

liberty to participate in the process of enquiry and defend his case in the manner known to law.

27. With the above observations, this Court is of an opinion that there is no infirmity, as such, in the order impugned passed by the first respondent in PAN:AABCD0553B/2011-12 dated 07.11.2018. Accordingly, WP No.33896 of 2018 stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

Index : Yes/No.
Internet : Yes/No.
Speaking Order/Non-Speaking Order.
Svn

16-04-2021

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S.M.SUBRAMANIAM, J.

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To

1.Tax Deputy Commissioner of Income Tax,
Central Circle-1,
Main Building,
63, Race Course Road,
Coimbatore-641 018.

2.Assistant Commissioner of Income Tax,
Central Circle-1,
Main Building,
63, Race Course Road,
Coimbatore-641 018.

WP No.33896 of 2018

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