**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**
**DATED: 09.12.2021**
**CORAM:**
**THE HONOURABLE MR.JUSTICE M.SUNDAR**
**W.P.[MD]No.21791 of 2021**
**and**
**W.M.P.[MD]No.18405 of 2021**

M/s.Jothi Malleables P Ltd.,
(Rep by its Managing Director),
B-22, New No.3, 1st Floor,
Sastri Road, Thillai Nagar,
Tiruchirapalli - 620 018. ... Petitioner

Vs.

1.The Assistant Commissioner of Income Tax,
Central Circle - 1,
Income Tax Department,
Trichy Main Building,
Williams Road, Cantonment Trichy,
Tiruchirapalli - 620 001.

2.The Principal Commissioner of Income Tax,
Central - 2,
108, Mahatma Gandhi Road,
Nungambakkam,
Chennai - 600 034. ... Respondents

**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records of the Writ Petitioner / Assessee on the file of the First Respondent to quash the impugned notice u/s 148 of the Act dated 19.01.2021 in DIN and Notice No.ITBA/AST/S/148/2020-21/1029885993 (1) for the assessment year 2018-19 for want of jurisdiction.

For Petitioner : Mr.A.S.Sriraman
For Respondents : Mr.N.Dilip Kumar
Senior Standing Counsel
Assisted by Ms.P.Ajitha

**O R D E R**
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In the captioned main writ petition a notice dated 19.01.2021 bearing Reference No.ITBA/AST/S/148/2020-21/1029885993(1) *qua* assessment year 2018-19 regarding the writ petitioner [hereinafter 'impugned notice' for the sake of convenience and clarity] has been called in question. To be noted assessment year 2018-19 shall hereinafter be referred to as 'said AY' for the sake of convenience and clarity.

**2.**Owing to the narrow compass on which the captioned main writ petition turns, with the consent of Mr.A.S.Sriraman, learned Counsel on record on behalf of writ petitioner and Mr.N.Dilip Kumar, learned Senior Standing Counsel assisted by Ms.P.Ajitha, who accepted notice on behalf of both the respondents, captioned main writ petition was taken up and heard out.

**3.**Notwithstanding several grounds that have been raised in the writ affidavit and very many averments that have been raised in the writ affidavit, besides case laws that have been annexed to the writ paper book, learned Counsel for writ petition at the hearing in the Admission Board submitted that he will restrict his submission to one point *qua* his campaign against the impugned notice. That one point turns on ***GKN Driveshafts*** principle being law laid down by Hon'ble Supreme Court in ***GKN Driveshafts (India) Ltd.,*** *Vs.* ***Income Tax Officer and Ors.*** *reported in* (2003) 1 SCC 72. This is also reported in [2002] 125 TAXMAN 963 (SC) but I would refer to the case law as reported in MANU/SC/1053/2002.

**4.**Before I proceed further, owing to the short point and narrow compass, bare minimum facts imperative for appreciating this order ie., factual matrix in a nutshell will suffice and such facts shorn of unnecessary particulars are that the writ petitioner filed original return of income *qua* said AY on 26.10.2015; that 18.06.2019 intimation under Section 143(1) of 'the Income Tax Act, 1961' ['IT Act' for the sake of brevity] accepting the return of income filed by the assessee / writ petitioner was sent to the writ petitioner; that thereafter on 12.09.2019 there was a survey in the place of business of the writ petitioner and to be noted, this survey is under Section 133A of IT Act; that thereafter the writ petitioner retracted the statement given in the survey and this is on 29.01.2020; that post retraction, on 19.01.2021 the impugned notice under Section 148 of IT Act came to be issued; that return of income pursuant to impugned notice was filed by the writ petitioner on 22.01.2021; that thereafter on 30.09.2021 a notice under Section 143(2) of the IT Act was issued by the assessing officer giving the reasons that reopening [on writ petitioner's request]; that the writ petitioner on 15.10.2021 filed objections to the reasons for reopening; that on 01.11.2021 further notice was issued by the assessing officer under Section 143(2) r/w. Section 129 of IT Act for proceeding with reassessment; that thereafter the captioned writ petition has been filed assailing the impugned notice ie., notice dated 19.01.2021 under Section 148 of IT Act.

**5.**As already alluded to supra, learned Counsel for writ petitioner notwithstanding very many averments and several grounds raised in the writ affidavit now restricts his prayer to only one point and that one point turns on ***GKN Driveshafts*** principle.

**6.**Learned Revenue Counsel pointed out that there is no infirmity in the Section 148 notice ie., the impugned notice but the point is ***GKN Driveshafts*** principle consists of four stages {i) assessee asking for reasons for reopening, ii) Department giving reasons for reopening, iii) assessee filing objections to such reasons and iv) Department passing a 'speaking order' after considering the assessee's objections} and only three stages have been completed in the case on hand and the final stage of making a speaking order has not been made. In my considered view this is what calls for minimum interference / intervention *qua* impugned notice, the details of which will be alluded to set out infra.

**7.*****GKN Driveshafts*** is a case where the assessee assailed notices under Section 143(2) and 148 unsuccessfully before the High Court, carried the matter to Hon'ble Supreme Court and Hon'ble Supreme Court while refusing to interfere with the order of High Court put in place a mechanism in cases where 148 notice is issued. This is neatly captured in paragraph No.5 of ***GKN Driveshafts*** case law as reported in Manupatra and paragraph No.5 reads as follows:

> *'**5.**We see no justifiable reason to interfere with the order under challenge. However, we clarify that when a notice under Section 148 of the Income Tax Act is issued, the proper course of action for the notice is to file return and if he so desires, to seek reasons for issuing notices. The assessing officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the notice is entitled to file objections to issuance of notice and the assessing office is bound to dispose of the same by passing a speaking order. In the instant case, as the reasons have been disclosed in these proceedings, the assessing officer has to dispose of the objections, if filed, by passing a speaking order, before proceeding with the assessment in respect of the abovesaid five assessment years.'*
>
> *[Extracted and reproduced as such]*

**8.**A careful perusal of paragraph No.5 supra read in conjunction with the factual matrix in instant case ie., in conjunction with the trajectory the assessment has taken in the case on hand will make it clear that all the stages in ***GKN Driveshafts*** principle except the last stage of the assessing officer passing a speaking order have been completed. In the instant case there is no disputation or disagreement that the assessing officer has not passed a speaking order on the objections of the writ petitioner / assessee ie., objections to the reasons for reopening. It is therefore now imperative that the ***GKN Driveshafts*** principle is complied with. On this short point, the matter is now sent back to the assessing officer viz., the first respondent to make a speaking order *qua* the writ petitioner's objections to the reasons for reopening. This shall be done by the first respondent assessing officer within three [3] weeks from today ie., on or before ***30.12.2021.*** In the captioned W.M.P. the limited order will be to the effect that the first respondent assessing officer will keep the assessment proceedings in abeyance for a period of three [3] weeks from today ie., till 30.12.2021 and thereafter carry the matter (subject of course to the speaking order) to its logical end ie., after ***30.12.2021.***

**9.**Captioned Writ Petition and captioned Writ Miscellaneous Petition is disposed of in the aforesaid manner with the aforementioned directives. There shall be no order as to costs.

Sd/-

Assistant Registrar (W)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

MR

***NOTE:****In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.*

To

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**RS (09.12.2021) 4P 3C**