BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)Nos.7894 and 7895 of 2016
and
W.M.P.(MD)Nos.6495 & 6496 of 2016

K.P.S.Enterprises a partnership firm,
represented by its partner,
Shri.K.P.Alagarsamy,
184/2, Bye Pass Road,
Madurai 625016. ...Petitioner in both W.Ps.

-Vs-

Income Tax Officer,
Non Corporate Ward 2(3),
Madurai 625002. ... Respondent in both W.Ps.

Prayer in W.P.(MD)No.7894 of 2016: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records in the matter of assessment of the petitioner for the assessment year 2007-08 in file No.AAKFK1539J and quash the notice under Section 148, dated 31.03.2014 and consequential assessment order dated 31.03.2016 of the respondent under Section 143(3) read with Section 147 of the Income-Tax Act, 1961 as without jurisdiction and ab initio void.

Prayer in W.P.(MD)No.7895 of 2016: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records in the matter of assessment of the petitioner for the assessment year 2008-09 in file No.AAKFK1539J and quash the notice under Section 148, dated 31.03.2014 and consequential assessment order dated 31.03.2016 of the respondent under Section 143(3) read with Section 147 of the Income-Tax Act, 1961 as without jurisdiction and ab initio void.

For Petitioner	:	Mr.R.Srinivasan
For Respondent (in both W.Ps)	:	Mrs.S.Srimathy Special Government Pleader

COMMON ORDER

Heard the learned counsel for the petitioner and the learned Special Government Pleader for the respondent.

2.K.P.S.Enterprises is a partnership firm that is assessed by the respondent. The case on hand pertains to the assessment years 2007-08 & 2008-09. In response to the notice issued on 31.03.2010 under Section 148 of the Income Tax Act, 1961, the petitioner filed returns and after scrutiny, for the assessment year 2007-08, the assessment order was passed on 30.12.2010, while for the subsequent year, the assessment order was passed on 21.12.2011. The petitioner is said to have paid all the taxes in terms of the aforesaid assessment orders. While so, the impugned notices were issued under Section 147 of Income Tax Act, 1961. The petitioner submitted his reply in response to the said notices. The petitioner had specifically challenged the very jurisdiction of the authority to issue the said notices. Rejecting the stand of the petitioner, the re-assessment orders were passed on 31.03.2016. They are under challenge in these writ petitions.

3.The respondent has filed a counter affidavit stating that the respondent is very much having the jurisdiction under Section 147 of the Act to initiate action for re-assessment. It is also submitted that without exhausting the appeal remedy, these writ petitions have been directly filed before this Court. The learned Standing Counsel would call upon this Court to dismiss both the writ petitions by upholding the stand set out in the counter affidavit.

4.I carefully considered the rival contentions and went through the materials on record. The cases on hand pertain to the assessment years 2007-08 and 2008-09. There is also no doubt that the original orders of assessment in respect of those two assessment years were passed and finalised under Section 143 of the Act after scrutiny. The notices under Section 147 of the Act were issued only on 31.03.2014. A mere look at the proviso to Section 147 of the Act would make it clear that no action shall be taken under Section 147 of the Act after the expiry of four years from the end of the relevant assessment years, unless the authority can bring the impugned action under exceptional circumstances set out in proviso itself. It is beyond cavil that the impugned action was taken after the expiry of four years from the end of the relevant assessment years. Therefore, the respondent is obliged to show that the present case would fall under the exceptional category. The exceptional categories read as under:-

> Provided that where an assessment under sub-section (3) of Section 143 of this section has been made for the relevant assessment year, 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 material facts necessary for his assessment, for that assessment year:
>
> Provided further that nothing contained in the first proviso shall apply in a case where any income in relation to any asset

(including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment for any assessment year:

Provided also that 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."

5.The learned counsel for the petitioner would state that the reasons assigned by the respondents for re-opening the assessment are as follows:-

1) the assessee firm had computed the income from house property as that from business which led to claim of excessive deduction of expenses.

2) Difference in the value of the property assessed and registered with SRO.

6.A mere look at both the reasons would show that they would not fall under any of the exceptional categories mentioned above. The learned counsel for the petitioner places reliance on the decision reported in ***(1999) 155 CTR Mad 165 (Fenner (India) Ltd., Deputy Commissioner of Income Tax).*** In the said decision, the Hon'ble High Court held that the precondition for the exercise of the power under Section 147 in cases where power is exercised within a period of four years from the end of the relevant assessment year is the belief reasonably entertained by the AO that any income chargeable to tax has escaped assessment for that assessment year. However, when the power is invoked after the expiry of the period of four years from the end of the assessment year, a further precondition for such exercise is imposed by the proviso namely that there has been a failure on the part of the assessee to make a return under Section 139 or in response to a notice issued under Section 142 or Section 148 or failure on the part of the assessment to disclose fully and truly all material facts necessary for his assessment for that assessment year. Unless the condition in the proviso is satisfied, the AO does not acquire jurisdiction to initiate any proceeding under Section 147 of the Act after the expiry of four years from the end of the assessment year.

7.It was further held in the aforesaid decision as follows:-

"21.The duty of an assessee is limited to fully and truly disclose all the material facts. The assessee is not required thereafter to prepare a draft assessment order. If the details placed by the assessment before the AO was in conformity with the requirements of all applicable laws and known accounting principles, and materials details has been exhibited before the AO, it is for the AO to reach such conclusions as he considered was warranted from such data and any failure on his part to do so cannot be regarded as assessee's failure to furnish the material facts truly and fully. Any lack of comprehension on the part of the AO in understanding the details placed before him cannot confer a justification for reopening the assessment, long after the period of four years had expired. On the facts of this case, it is clear that the escapement of income if any on this account is not on account of any failure on the assessee's part to disclose the material facts fully and truly. The notice issued by the AO in exercise of his power under Section 147, therefore, cannot be sustained.

22.As the error here is one of jurisdiction, it is not necessary for the assessee to take recourse for the remedies by way of appeal, revision, etc., It is well settled that when a jurisdictional error is brought to the notice of this Court such errors are capable of being corrected by this Court in exercise of the powers conferred under Article 226 of the Constitution of India. The Supreme Court in the case of CIT Vs. Progressive Engineering and another 200 ITR 321 (sic) held that when all the relevant facts were before the Court and the law is clear on the subject, it is the duty of the High Court to interfere. That was also a case where the proceedings were sought to be initiated against the assessee under Section 147 of the Act.”

8.It is not the case of the respondent that there was any suppression on the part of the assessee. The assessee had chosen to make full disclosure and make a certain claim on that basis. The petitioner's claim was accepted by the then Assessing Officer. The subsequent officer has chosen to take a different view. The learned counsel for the petitioner placed reliance on the decision reported in ***(2010) 320 ITR 521(CIT Vs. Kelvinator of India Ltd.,)*** for the proposition that change of opinion on the part of the subsequent assessing officer cannot be a ground to reopen a concluded assessment.

9.I am fully in agreement with the aforesaid contention of the learned counsel for the petitioner. The orders impugned in the writ petitions have been passed without jurisdiction. They are quashed. These Writ Petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CSI)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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
Income Tax Officer,
Non Corporate Ward 2(3),
Madurai 625002.
+1 CC to M/s.R.SRINIVASAN, Advocate (SR-9883[F] dated 10/03/2021)

+1 CC to M/s.S.SRIMATHY, Advocate (SR-9960[F] dated 10/03/2021)

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