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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 01.04.2021

Pronounced on: 16. 04.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD)Nos.23265 to 23268 of 2018

and

W.M.P. (MD)Nos.21126 to 21129 of 2018

and

W.M.P. (MD)Nos.17650, 17652, 17654 & 17656 of 2019

Dr.Raj Arivazhagan

... Petitioner in all W.Ps.

-Vs-

1.The Income Tax Officer,
Ward-1,
Income Tax Office,
Karaikudi.

2.The Joint Commissioner of Income Tax,
Karaikudi Range,
Karaikudi.

... Respondents in all W.Ps.

Prayer in W.P. (MD)No.23265 of 2018: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records of the first respondent dated 12.03.2018 issued under Section 148 of the Income Tax Act for the assessment year 2013-14 in PAN:ANOPA7072R and quash the same.

Prayer in W.P. (MD)No.23266 of 2018: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records of the first respondent dated 12.03.2018 issued under Section 148 of the Income Tax Act for the assessment year 2014-15 in PAN:ANOPA7072R and quash the same.

Prayer in W.P. (MD)No.23267 of 2018: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records of the first respondent dated 12.03.2018 issued under Section 148 of the Income Tax Act for the assessment year 2015-16 in PAN:ANOPA7072R and quash the same.

Prayer in W.P. (MD)No.23268 of 2018: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records of the first respondent dated 12.03.2018 issued under Section 148 of the Income Tax Act for the assessment year 2016-17 in PAN:ANOPA7072R and quash the same.



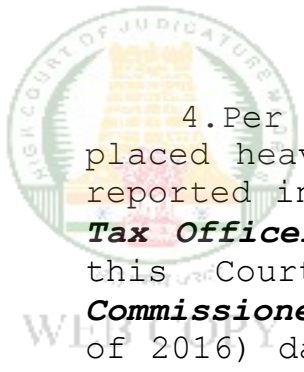
For Petitioner : Mr.T.Vasudevan
for Mr.R.Janakiraman (in all WPs)
For Respondents : Mrs.S.Srimathy
(in all W.Ps.) Special Government Pleader

COMMON ORDER

The petitioner in all these four writ petitions is one and the same. The assessment years alone are different. The petitioner is a Doctor by profession. For the aforesaid assessment years, he had filed returns of income. The returns were also accepted. While so, survey under Section 133A of the Income Tax Act was conducted in the premises of M/s Raj Children Hospital, Ambalpuram, Karaikudi on 11.01.2018. Based on the same, notice under Section 148 of the Act was issued on 14.03.2018 for reopening the assessments. The petitioner filed returns of income in response to the above notice declaring the same total income as in the original returns. On 17.04.2018, the petitioner sent a letter to the first respondent seeking the reasons recorded for reopening the assessments. On 08.05.2018, the first respondent furnished the reasons recorded by him for reopening the assessment. Thereafter, on 13.06.2018, the petitioner submitted his objections for reopening the assessment on the ground that the reasons recorded do not point any escapement of income but only for verification of certain transactions. In response to the same, the first respondent replied that notice under Section 148 of the Act has been issued only after obtaining necessary approval from the jurisdictional Joint Commissioner and hence, the reopening is in accordance with law. Thereupon, the present writ petitions came to be filed questioning the impugned notices under Section 148 of the Income Tax Act for reopening the assessment.

2.The respondent has filed a detailed counter affidavit seeking to justify the initiation of the impugned proceedings.

3.The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petitions. He raised a host of contentions and relied on a number of case laws. In fact, the compilation of case laws was also submitted. As regards the assessment year 2016-17, the petitioner's counsel pointed out that he had filed the returns of income on 24.08.2017 and as per Section 143(2) of the Act and its proviso, the respondent had time till the expiry of six months from the end of the financial year in which the return is filed for the purpose of taking up the case for scrutiny proceedings. The time limit for issuing notice under Section 143(2) of the Act would expire only on 30.09.2018. In the decision reported in **(2009) 308 ITR 249 (Mad) (Commissioner of Income Tax Vs. Qatalys Software Technologies Ltd.)**, the Madras High Court had held that the assessing officer is barred from issuing notice for reassessment proceedings, when the time for issuing notice under Section 143(2) of the Act has not expired.



4.Per contra, the learned standing counsel for the respondents placed heavy reliance on the decision of the Hon'ble Supreme Court reported in **(1993) 4 SCC 77 (M/s.Pool Chand Bajrang Lal Vs. Income Tax Officer and another)** which was followed by a learned Judge of this Court in **M/s.South Asia Fm Limited Vs. The Assistant Commissioner of Income Tax, Chennai** (W.P.Nos.10257, 44312 and 44313 of 2016) dated 10.10.2018. She contended that the petitioner ought not to rush to this Court at the notice stage itself. She pressed for dismissal of these writ petitions.

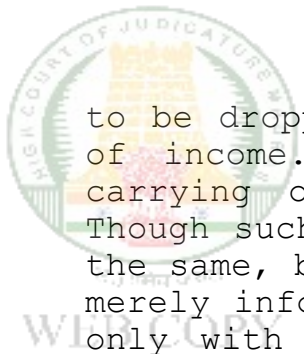
5.I carefully considered the rival contentions and went through the materials on record. I am of the view that the preliminary point raised by the petitioner's counsel in para 2 of the rejoinder deserves to be accepted. The said para reads as follows:-

"2.The petitioner submits that he had asked the reasons for reopening the assessment which was furnished by the first respondent and the same has been extracted in the affidavit. A mere reading of the reasons would show that there is no escapement of income as contemplated in the notice issued under Section 148. Further, the petitioner has filed a reply dated 13.06.2018 objecting to the reopening on the ground that the reasons recorded do not point any escapement of income but only for verification of certain transactions. In the reply, the petitioner has stated that regular books of accounts were maintained and it was not available in the premises when the survey took place. Further, the first respondent has not passed any order on the reply which is mandatory in pursuance of the Supreme Court Judgment in GKN Driveshafts case reported in 259 ITR 19. Hence, on this ground also, the notice is liable to be quashed."

6.The Hon'ble Supreme Court, in **GKN Driveshafts (India) Ltd. vs. Income Tax Officer and Ors. reported in 259 ITR 19**, held as follows:-

"5. ... 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 officer 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."

7.In the case on hand, the petitioner had raised a specific objection that the proposal for reopening the assessment is liable



to be dropped, since there is no finding that there was escapement of income. It was further contended that for the purpose of carrying on verification exercise, reopening cannot be ordered. Though such specific contention was raised, instead of dealing with the same, by passing a speaking order, the first respondent chose to merely inform the assessee that the proceedings have been initiated only with the approval of the jurisdictional Joint Commissioner. The first respondent has not at all dealt with the contentions raised by the assessee. The Hon'ble Supreme Court in *GKN Driveshafts* had specifically held that the assessing officer is bound to dispose of the assessee's objections by passing a speaking order. In as much as this requirement of law as laid down by the Supreme Court has not been complied with, the respondent is directed to dispose of the petitioner's objections by passing a speaking order within a period of four weeks from the date of receipt of a copy of this order. In this view of the matter, I refrain from interfering with the impugned notices. If the assessing officer chooses to reject the petitioner's objections by passing a speaking order, then, it is open to the petitioner herein to move this Court again. All the contentions of the petitioner are left open.

8. These Writ Petitions are disposed of with the aforesaid direction. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Rmi

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

1.The Income Tax Officer,
Ward-1,
Income Tax Office,
Karaikudi.



2.The Joint Commissioner of Income Tax,
Karaikudi Range,
Karaikudi.

+1 CC to M/s.S.SRIMATHY, Advocate (SR-16388[F] dated 19/04/2021)

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