IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

Present :- Hon'ble Mr. Justice Md. Nizamuddin

WPO 2006 of 2022

Lakshman Prasad Agarwal
Vs
Union of India & Ors.

For the Petitioner :- Mr. Pranit Bag, Adv.
Mr. Anujit Mookherji, Adv.
Mr. Piyal Gupta, Adv.

For the Respondent :- Mr. Om Narayan Rai, Adv.

Judgment On :- 20.05.2022

MD. NIZAMUDDIN, J.

The Court: Heard learned Counsel appearing for the parties.

In this Writ Petition petitioner has challenged the impugned notice dated 26th March, 2021 under Section 148 and final assessment order dated 31st March, 2022, under Section 147/143 (3) of the Income Tax Act, 1961, relating to assessment year 2017-18 raising a demand of Rs. 8,57,19,806/-.

Peculiar facts involved in this case as appears from record annexed to the Writ Petitioner by the petitioner itself is that on 26th October, 2021 petitioner received the impugned notice under Section 148 of the Act by which it was asked to file a return in the prescribed form for the relevant assessment year as appears at Page 38 of the Writ Petition and in response to the said notice petitioner filed a return on 9th October, 2021. Thereafter, as appears from Page 45 of the Writ Petition that on 22nd October, 2021 petitioner's authorised representative one Murarka & Associates asked the Assessing Officer for furnishing of the recorded reason for issuance of the aforesaid notice. It appears at Page 48 of the Writ Petition that the respondent Assessing Officer concerned furnished recorded reason to the petitioner on 26th October, 2021 and after finding no response or any objection from the petitioner against the impugned notice under Section 148 of the Act, the Assessing Officer concerned, having no option, proceeded with the impugned reassessment proceeding by issuing notice under Section 142 (1) of the Act, on 6th December, 2021, asking the petitioner to furnish the relevant accounts and documents as referred in the said notice, within 13th December, 2021, as appears at Page 51 of the Writ Petition. In compliance of the aforesaid notice dated 6th December, 2021, under Section 142 (1) of the Act, the said authorised representative submitted relevant documents on 13th December, 2021, with specific request to the Assessing Officer that "Considering the same, we request you to complete the proceeding initiated u/s 147 of the Income Tax Act, 1961 without drawing any adverse inference" as appears from Annexure- P-7 at Page 53 of the Writ Petition. It appears from the aforesaid compliance letter dated 13th December, 2021, written by the said authorised representative that nowhere it has challenged the legality and validity of the impugned notice under Section 148 or initiation of the impugned proceeding under Section 147 of the Income Tax Act, 1961, and petitioner itself had chosen not to object to the aforesaid impugned notice and proceeding on or after receiving the aforesaid notice under Section 148 of the Act and the recorded reason rather petitioner himself had requested the Assessing Officer to complete the impugned reassessment proceedings under Section 147 of the Act.

It appears from record that after compliance of the aforesaid impugned notice under Section 142 (1) of the Income Tax Act, 1961 dated 6th December, 2021, by the petitioner, another notice under Section 142 (1) of the Act was issued on 14th December, 2021, asking the petitioner to furnish relevant accounts and documents referred therein on or before 20th December, 2021, as appears from Page 54 of the Writ Petition. Petitioner complied with the aforesaid second notice also under Section 142 (1) of the Act dated 14th December, 2021 through the same authorised representative by its letter dated 20th December, 2021 as appears at Page 60 of the Writ Petition and on perusal of the same I find that even on or before 22nd December, 2021 nowhere petitioner had objected to the issuance of the aforesaid impugned notice under

Section 148 of the Act or initiation of the impugned proceeding under Section 147 of the Act or prayed for dropping of the said proceeding.

It appears from Page 64 of the Writ Petition that after compliance of the second notice under Section 142 (1) of the Act, assessee petitioner changed his authorised representative and one Anujit Mookherji, on 14th January, 2022, wrote a letter to the Assessing Officer requesting him to provide a copy of the statement of one Rajal Ashar, recorded under oath on 7th July, 2017, as referred in the recorded reason for reopening of the assessment. It appears from Page 66 of the Writ Petition that the said new authorised representative wrote a letter to the Assessing Officer on February 11, 2022 for the first time after issuance and compliance of the aforesaid two notices on different dates under Section 142 (1) of the Act without making objection to the aforesaid notice under Section 148 of the Act, dated 26th March, 2021, taking a contrary stand to petitioner's own letter dated 13th December, 2021 where petitioner himself had requested the Assessing Officer to complete the impugned reassessment proceedings under Section 147 of the Act and by actively participating in the impugned reassessment proceedings from time to time. It appears from Page 72 of the Writ Petition that on 14th February, 2022 another notice was issued under Section 142 (1) of the Act asking the petitioner to furnish the relevant accounts and documents on or before 17th February, 2022 and a show-cause notice was issued on 12th March, 2022 to the petitioner asking him to give reply to the same on or before 16th March, 2022. It appears from Page 79 of the Writ Petition that now the earlier authorised representative Murarka & Associates filed its reply on 27th March, 2022, against the aforesaid show-cause notice dated 12th March, 2022 giving a detailed reply to the aforesaid show-cause notice and specifically requesting therein that "Thus, the proceeding u/s 148 must be completed without any adverse remarks on the assessee and no addition should be made" even without any request to drop the impugned proceeding. On perusal of the aforesaid letter of the said earlier authorised representative, dated 27th March, 2022, nowhere I find that any legality or validity of the impugned notice under Section 148 or jurisdiction to initiate proceedings under Section 147 of the Act has been challenged by the petitioner rather petitioner himself has requested the Assessing Officer to complete the impugned reassessment proceeding on the basis of the aforesaid notice under Section 148 of the Act.

It appears from Page 105 of the Writ Petition that petitioner's earlier authorised representative Murarka & Associates wrote another letter/representation on 28th March, 2022 against the aforesaid show-cause notice dated 12th March, 2022, and on perusal of the same it appears that the petitioner himself again requested the Assessing Officer to complete the impugned reassessment proceedings on the basis of impugned notice under Section 148 of the Act by stating that "Thus, the proceeding u/s 148 must be completed without any adverse remarks on the assessee and no addition should be made". It appears from Pages 144 and 145 of the Writ Petition that final assessment order under Section 147/143 (3) of the Income Tax Act, 1961 was passed on 31st March, 2022, raising a demand of Rs. 8,57,19,806/-. After receiving the impugned final assessment order under Section 147/143 (3) of the Income Tax Act, 1961 dated 31st March, 2022, and after actively participating in the impugned reassessment proceedings throughout without challenging the impugned notice under Section 148 of the Act dated 26th March, 2021 even after receiving the recorded reason on 26th October, 2021 and after complying with the aforesaid several notices under Section 142 (1) of the Act dated 26th October, 2021, 6th December, 2021, 14th December, 2021, 14th February, 2022 and the show-cause notice dated 12th March, 2022 with repeated request by himself to complete the impugned reassessment proceeding, now at this stage after completion of assessment, petitioner has filed this Writ Petition on 18th April, 2022 against the impugned final assessment order dated 31st March, 2022 which is an appealable order and wants this Writ Court to interfere with the impugned notice under Section 148 of the Act and final assessment order passed on the basis of impugned notice under Section 148 of the Act dated 26th March, 2021 on the ground that the same is bad in law.

Main ground of challenge to the impugned assessment order, by the petitioner, in this Writ Petition is that the impugned notice under Section 148 and initiation of proceedings under Section 147 of the Income Tax Act, 1961, was alleged to be bad in law for the reason of non-compliance of the guidelines laid down by the Hon'ble Supreme Court in the case of GKN Driveshafts (India) Pvt. Ltd. –Vs- Income Tax Officers reported in [2003] 259 ITR (SC) 19 by alleging that the final assessment order under Section 147 of the Act has been passed without disposing his objection to the impugned notice under Section 148 of the Act and that there is a change of opinion.

Petitioner in support of his such contention, has relied on the following decisions:

(i) GKN Driveshafts (India) Pvt. Ltd. –Vs- Income Tax Officers & Ors. reported in [2003] 259 ITR 19 (SC).

(ii) Income Tax Officer Ward No. 16 (2) –Vs- M/s Techspan India Pvt. Ltd. & Anr. reported in (2018) 6 SCC 685.

(iii) Fast Finance (P.) Ltd. –Vs- Assistant Commissioner of Income Tax reported in (2022) 136 taxmann.com 304 (Madras).

Learned advocate appearing for the respondents opposing this Writ Petition submits that it is not maintainable at this stage for interfering with the impugned final assessment order by invoking constitutional writ jurisdiction of this Court, which is appealable order under the statute and in view of the fact that the petitioner has waived his right to immediately file objection to the impugned notice under Section 148 of the Act after receiving recorded reason and in view of the conduct of the petitioner that he himself has actively participated in the impugned reassessment proceeding from the time after receiving the impugned notice under Section 148 of the Act and recorded reason till the date of passing of final impugned assessment order by responding to three notices under Section 142 (1) of the Act from time to time subsequent to the issuance of notices under Section 148 (1) of the Act and himself requesting the Assessing Officer concerned to complete the reassessment proceeding on the basis of impugned notice under Section 148 of the Act which are matters of record.

Respondents submit that the judgment of the Hon'ble Supreme Court in the case of GKN Driveshafts (supra) and two other decisions relied upon by the petitioner are distinguishable and not applicable to the case of the petitioner in view of exceptional facts and circumstances involve in the instant case as appears from record.

Considering the submission of the parties, facts and circumstances of the case as appears from record and decisions relied upon by the petitioner, I am not inclined to entertain this Writ Petition and dismiss the same for the following reasons:

It appears from record annexed to the Writ Petition by the petitioner himself that after receipt of the impugned notice under Section 148 of the Income Tax Act, 1961, dated 26th March, 2021, though petitioner had asked for furnishing recorded reason for initiating the impugned assessment proceeding under Section 147 of the Act which was furnished to him on 26th October, 2021, petitioner did not prefer to object the same by filing any objection and the Assessing Officer having not received any objection against the aforesaid impugned notice under Section 148 of the Act from the petitioner, having no option, had to proceed with the impugned reassessment proceeding by issuing notice under Section 142 (1) of the Act on 6th December, 2021 and the petitioner himself having chosen to comply with the aforesaid impugned notice dated 13th December, 2021 without filing any objection to the aforesaid impugned notice under Section 148 of the Act and it appears from aforesaid authorised representative's letter dated 13th December, 2021 that petitioner himself had requested the Assessing Officer to complete the impugned reassessment proceedings initiated under Section 147 of the Act even after receiving the second notice on 14th December, 2021, under Section 142 (1) of the Act, petitioner by his letter dated 22nd December, 2021, further complied with the same without making any objection against the impugned notice under Section 148 of the Act.

It appears from record that the petitioner changed his earlier authorised representative through whom he had complied the notices under Section 142 (1) of the Act and requested the Assessing Officer to complete the impugned reassessment proceeding and for the first time on 11th February, 2022, engaged another authorised representative one Anujit Mookherji who at this stage of the impugned proceeding, for the first time wrote a letter to the Assessing Officer objecting to the initiation of the impugned reassessment proceeding on the alleged ground of change of opinion that is almost after nine months of receiving the recorded reason and after actively participating in the impugned reassessment by complying the notices issued from time to time under Section 142 (1) of the Act and himself requesting the Assessing Officer to complete the impugned reassessment proceeding which are matters of record and have been discussed above in detail.

Considering the relevant records annexed to the Writ Petition by the petitioner himself and the conduct of the petitioner by way of waiving his right to file any objection against the impugned notice immediately after receiving the recorded reason and actively participating in the impugned proceeding and specifically repeatedly requesting the Assessing Officer to complete the impugned reassessment proceeding, I am of the considered view that the Assessing Officer concerned has rightly proceeded with the impugned reassessment proceeding and passed the impugned assessment order. In my considered opinion none of the judgments cited by the petitioner is applicable to the instant case in view of exceptional facts and circumstances involved in this Writ Petition which have been elaborately discussed above in detail.

Judgment of the Hon'ble Supreme Court in the case of GKN Driveshafts (supra) upon which petitioner has relied, in the facts and circumstances of the case is not applicable to the present case and rather it goes against the petitioner since in the said judgment, ratio is that the Assessing Officer will be bound to furnish the recorded reasons which he had done in this case while the petitioner after receipt of the recorded reason himself had chosen not to file any objection immediately against the impugned notice as per the decision in the case of GKN Driveshafts (supra) and as such question of disposal of petitioner's objection against the impugned notice under Section 148 of the Act before issuance of notice under Section 142 (1) of the Act does not arise and the Assessing Officer after not receiving any objection, having no option, has rightly proceeded with the impugned reassessment proceedings by issuing notices under Section 142 (1) of the Act from time to time and the petitioner himself actively participated in the impugned assessment proceedings by complying with the aforesaid notices under Section 142 (1) of the Act and petitioner himself repeatedly requested the Assessing Officer to complete the impugned reassessment proceeding under Section 147 of the Act which are all matters of record, has rightly completed the assessment and passed the final assessment order which is appealable under the statute.

Judgments in the case of Kelvinator of India Ltd (supra) relied by the petitioner is also not applicable to this case in view of peculiar and exceptional facts and circumstances involve in the instant case as discussed above.

Judgment in the case of Fast Finance (P) Ltd. (supra) relied upon by the petitioner is also not applicable to the present case in view of exceptional facts and circumstances as discussed above. In addition, on perusal of the aforesaid judgment of the Hon'ble Madras High Court, I find in Paragraph 3 that in that case immediately after receiving notice under Section 148 of the Act, petitioner had filed a reply to the same within a month and had specifically requested the Assessing Officer to close the file and such request was made before issuance of any notice under Section 142 (1) of the Act and thereafter a detailed objection was filed and in that case petitioner himself had never requested the Assessing Officer concerned to complete the reassessment proceeding while in the present case petitioner did not file any objection or reply after receiving the recorded reason rather after receiving the same, petitioner complied with several notices under Section 142 (1) of the Act, and he himself made repeated request to the Assessing Officer to complete the impugned reassessment proceeding which are matters of record.

In view of the discussion made above and in view of exceptional facts and circumstances involve in the instant case this Writ Petition being WPO No. 2006 of 2022 is dismissed. No order as to costs.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[MD. NIZAMUDDIN, J.]