IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.02.2022

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
AND
THE HONOURABLE MR. JUSTICE J. SATHYA NARAYANA PRASAD

W.A. Nos. 249 & 250 of 2022
and
C.M.P.Nos.1819 & 1821 of 2022

Pannalal Madan Bai ...Appellant/Petitioner in W.A.No.249 of 2022
Pannalal Kochar ...Appellant/Petitioner in W.A.No.250 of 2022

Versus

Assistant Commissioner of Income Tax
Non Corporate Circle - 9(1)
121, M.G.Road,
Chennai - 600 034.
... Respondent/Respondent in both cases

Writ Appeals filed under Clause 15 of Letters Patent to set aside the common order dated 30.11.2021 passed in W.P.Nos.1606 and 1604 of 2020.

Prayer in W.P.No.1604 of 2020:

Writ Petition filed under Article 226 of the Constitution of India to issue Writ of Certiorari to Call for the records on the file of the respondent passed in reassessment order u/s. 143(3) r.w.s 147 of I.T. Act 1961 NCC-9(1)/ SCRUTINY - 147AACPK5972B/ 2019-20 dated 30.12.2019 for AY 2012-13 in pursuance to the notice u/s 148 dated 31.03.2019 and quash the same as illegal without jurisdiction authority of law barred by limitation and against the principles of natural justice.

Prayer in W.P.No.1606 of 2020:

Writ Petition filed under Article 226 of the Constitution of India to issue Writ of Certiorari to Call for the records on the file of the respondent passed in reassessment order u/s. 143(3) r.w.s 147 of I.T. Act 1961 NCC-9(1)/ SCRUTINY - 147/ AAOPP8550C/ 2019-20 dated 30.12.2019 for AY 2012-13 in pursuance to the notice u/s 148 dated 31.03.2019 and quash the same as illegal without jurisdiction authority of law barred by limitation and against the principles of natural justice.

For Appellants :Mr. T.Pramodkumar Chopda
(in both cases)

For Respondent :Mrs. Hema Muralikrishnan (in both cases)
Senior Panel Counsel

COMMON JUDGMENT

(Judgment of the Court was delivered by R. MAHADEVAN, J.)

According to the appellants, they are assesses on the file of the respondent. They duly filed their return of income for the assessment year 2012-13 electronically on 09.07.2012, which were processed under section 143(1) of the Income tax Act, 1961. As far as the case of the appellant in WA.No.249 of 2022 is concerned, after scrutiny of the return of income, the respondent passed the assessment order dated 01.07.2014 under section 143(3) of the Act, making addition towards long term capital gain, to the extent of her 50% undivided share on sale of property in pursuance of the unregistered Joint Development Agreement dated 01.05.2007. With respect to the case of the appellant in WA.No.250 of 2022, the assessment was reopened and re-assessment order was passed on 03.04.2014 under section 143(3) r/w section 147 of the Act, making addition towards long term capital gain to the extent of his 50% undivided share on sale of property in pursuance of the unregistered Joint Development Agreement dated 01.05.2007. While so, in both the cases, on the last date of extended period of six years of limitation for the assessment year 2012-13, the respondent issued reassessment notices dated 31.03.2019 under section 148 of the Act, to which, the appellants filed their return of income on 13.04.2019 along with replies dated 15.04.2019 and also requested the respondent to furnish the reasons recorded for reopening the assessment. Without furnishing the reasons recorded, the respondent issued notices dated 25.09.2019 under section 142(1) r/w section 129 of the Act. After furnishing the reasons recorded for reopening the assessment, the appellants filed their objections on 29.10.2019 along with necessary documents. During the pendency of the said objections, the respondent issued show cause notices dated 19.12.2019 quantifying the alleged escaped income and proposing to add the same in the total income. On receipt of the same, the appellants filed their replies on 23.12.2019 stating that the show cause notices issued to proceed further in pursuance of the notices under section 148 without disposing of the objections dated 28.10.2019 filed by them, are contrary to law laid down by the Supreme Court in GKN Driveshafts India Limited v. Income Tax Officer and another [259 ITR 119 (SC)]. Thereafter, they received reassessment orders dated 30.12.2019 confirming the addition of income based on the alleged escapement of long term capital gain income and also notices under section 271(c) for initiating the penalty proceedings.

2.Aggrieved over the orders of reassessment passed by the respondent, the appellants filed WP Nos.1604 and 1606 of 2020 to quash the same as illegal, without jurisdiction, barred by limitation and against the principles of natural justice. By order dated 30.11.2021, the said writ petitions were disposed of by the learned Judge, in the following terms:

> "13. Considering the same, the impugned orders are set aside and the matters are remitted back to the respondent to pass orders afresh on merits. The petitioners are directed to appear before the Competent Authority through Video Conferencing or any other modes either in person or through their authorised representative provided under the rules for completion of the assessment pursuant to the notices issued under Section 148 of the Income Tax Act, 1961 on 31.03.2019. On a date to be fixed the petitioner is at liberty to file additional representation/reply, if any within a period of 15 days from the date of receipt of a copy of this order.
>
> 14.The Competent Authority is directed to pass orders in respective cases, preferably within a period of 60 days from the date of receipt of a copy of this order.
>
> 15. These Writ Petition are disposed of in above terms. Consequently, connected miscellaneous petitions are closed."

3.It is the specific contention of the learned counsel for the appellants that the appellants filed detailed objections with supportive documents to the effect that the records were subject matter of scrutiny to verify the built up area and indexation of land for determination of long term capital gain in the assessment / reassessment proceedings, not only for the assessment year in question, but also for previous assessment years viz., 2008-09, 2009-10 and 2011-12 and the same were accepted and reached finality. However, the respondent by orders dated 24.12.2019, disposed of the objections in a mechanical and routine manner, without considering any of the points raised in the said objections. It is further submitted that the reasons recorded for reopening the assessment for the year 2012-13 are mere change of opinion based on the records available in the assessment file; there is no new and tangible material available for reassessment; and that, there was no specific finding as regards the reasons to believe that the income had escaped assessment to tax. After having duly checked, verified, considered and scrutiny of necessary documents, assessment orders were passed not only for the assessment years 2008-09, 2009-10 and 2011-12, but also for the assessment year in question. Without considering these aspects, the learned Judge, instead of quashing the reassessment orders, remanded the matter to the assessing officer for fresh consideration, by the order impugned herein, which is arbitrary, illegal and against the settled principles of law and therefore, the same is liable to be set aside.

4.Heard the learned senior panel counsel appearing for the respondent, who submitted that after considering the grievances put forth by the appellants, in the light of the documents placed, the learned Judge has rightly remanded the matter to the assessing officer for reconsideration, which does not require any interference by this court.

5.This Court has also perused the materials available on record, including the order impugned in these writ appeals, which disclosed that the learned Judge after hearing the parties and upon examining the documents produced, was of the view that there was procedural irregularity and the guidelines framed by the Supreme Court in GKN Driveshafts (India) Ltd case (supra) were not followed, while conducting the reassessment proceedings by the respondent; and therefore, set aside the reassessment orders and remanded the matter to the assessing officer to pass orders afresh, after complying with the required procedure as laid down under the law. This court finds no infirmity or illegality in the order so passed by the learned Judge, warranting interference.

6.At this juncture, the learned counsel for the appellants drew the attention of this court to paragraph 13 of the order impugned herein, wherein, it was stated that “the matters are remitted back to the respondent to pass orders afresh on merits” and pointed out that there was no reference for considering the objections filed by the appellants. Hence, the learned counsel sought liberty to the appellants to file additional objections and prayed for appropriate direction to the respondent in this regard.

7.In reply, the learned senior panel counsel appearing for the respondent fairly submitted that the proceedings shall be carried out by the respondent after following the procedure as stipulated in the decision of the Supreme Court in GKN Driveshafts (India) Ltd (supra) and hence, there is no need to apprehend about the conduct of the reassessment proceedings by the respondent.

8.Recording the aforesaid submissions made by the learned senior panel counsel appearing for the respondent, this court grants liberty to the appellants to file additional objections, if any, within a period of two weeks from the date of receipt of a copy of this judgment. Thereafter, the respondent shall consider each and every points raised in the earlier objections as well as the additional objections, if any, to be filed by the appellants and pass orders afresh, after following the procedure as laid down by the Supreme Court in GKN Driveshafts (India) Ltd case (supra), within a period of sixty days. Except the same, there is no modification in respect of the order passed by the learned Judge, which is impugned herein.

9.Accordingly, both the writ appeals stand disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

dhk
To

The Assistant Commissioner of Income Tax,
Non Corporate Circle - 9(1),
121, M.G.Road, Chennai - 600 034.

+1cc to Mr.T.Pramodkumar Chopda, Advocate Sr.9604
+1cc to Ms.Hemamuralikrishnan, Advocate Sr.9326

W.A. Nos.249 & 250 of 2022

gj[co]
srg 10/03/2022