IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2022

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.2681 of 2022
and
W.M.P.Nos.2844 & 2845 of 2022

M/s.SNJ Distillers Private Limited,
Represented by its Managing Director,
Mr.N.Jayamurugan,
having registered office at
Old No.47, New No.99,
Canal Bank Road, C.I.T. Nagar,
Nandanam, Chennai - 600 035. ... Petitioner

Vs

1.The Principal Director of Income Tax (Investigation),
Income Tax Investigation Wing Building,
No.108, MG Road, Nungambakkam,
Chennai - 600 034.

2.The Deputy Director of Income Tax (Investigation),
Unit 2(2), Chennai,
Income Tax Investigation Wing Building,
No.108, MG Road,
Nungambakkam,
Chennai - 600 034.

3.The Deputy Commissioner of Income Tax,
Central Circle 2(1),
New Income Tax Building,
No.46, MG Road,
Nungambakkam,
Chennai - 600 034.

4.Assistant Commissioner of Income Tax,
Central CIR 3(2), Chennai Investigation Building,
New No.46, (Old No.108),
Mahatma Gandhi Road,
Chennai - 600 034. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for the records of the 4th respondent pertaining to the notice having Ref.No.ITBA/AST/S/148/2020-21/1031971559(1) dated 30.03.2021 issued by the 4th respondent under Section 148 of the Income Tax Act for the assessment year 2013-14 and the consequential order dated 23.12.2021 having Ref.No.ITBA/AST/F/17/2021-22/1038058832(1) issued by the 4th respondent and quash the same as illegal, without jurisdiction, arbitrary, as ab initio void and violative of Article 14 of the Constitution of India.

For Petitioner : Mr.R.V.Easwar
Senior Counsel
For Mr.N.R.R.Arun Natarajan

For Respondents : Mr.A.P.Srinivas
Senior Standing Counsel

ORDER

The prayer sought for herein is for a Writ of Certiorari, calling for the records of the 4th respondent pertaining to the notice having Ref.No.ITBA/AST/S/148/2020-21/1031971559 (1) dated 30.03.2021 issued by the 4th Respondent under Section 148 of the Income Tax Act for the Assessment Year 2013-14 and the consequential order dated 23.12.2021 having Ref.No.ITBA/AST/F/17/2021-22/1038058832(1) issued by the 4th respondent and quash the same as illegal, without jurisdiction, arbitrary, as ab initio void and violative of Article 14 of the Constitution of India.

2. The short facts, which are required to be noticed for the disposal of this Writ Petition read thus:

The petitioner company was established in the year 2009 with the object of manufacturing alcoholic beverages and has established factories in Tamil Nadu and Andhra Pradesh. In 2010, a survey under Section 133A of the Income Tax Act, 1961 (in short, 'The Act') was conducted by the respondents in the premises of the petitioner and since there was no incriminating document found in the premises of the petitioner, thereafter, a search was conducted on 12.05.2012 at the premises of the petitioner.

3. Pursuant to the said search conducted on 12.05.2012, the petitioner's case for the Assessment Year 2013-14 was taken

up for scrutiny and notice under Section 142(1) of the Act was issued on 12.08.2014, then notice under Section 143(2) of the Act was issued on 30.09.2014. The petitioner e-filed its return for the Assessment Year 2013-14 on 30.09.2014.

4.Thereafter, an assessment order dated 30.03.2015 under Section 143(3) of the Act was passed by the 4^{th} respondent.

5.However, once again, the Revenue conducted a search being the second search under Section 132 of the Act, pursuant to which, the petitioner filed return on 30.09.2017 and this time also, the assessment was completed on 31.07.2018. Thus, the scrutiny assessment for the Assessment Year 2013-14 was completed twice.

6.When that being the position, there was a third search conducted under Section 132 of the Act on 06.08.2019. In a series of search or search conducted in more than one place, they also conducted a search in a premises belongs to third party namely, M/s.Aravind Bottle Suppliers during the course of the third search conducted between 06.08.2019 and 11.08.2019.

7. Based on the said third search conducted especially in the premises of the said third party, of-course, in the name of the assessee, they already initiated proceedings by issuing notices under Section 153A of the Act and in respect of the said proceedings, already writ petitions had been filed by the assessee, which are pending before this Court, where, stay has been granted.

8.Since the said 153A proceedings should be only for six years prior to the search, it covered only the Assessment Years 2014-15 to 2019-20. Therefore, insofar as the Assessment Year 2013-14 is concerned, the Revenue seems to have reopened it under Section 147 of the Act. Pursuant to the said decision, they issued notice under Section 148 of the Act on 30.03.2021. The petitioner having filed returns for the Assessment Year 2013-14 also asked for the reason, as to why, there was a proposal to reopen under Section 147 of the Act. In response to the same, though no direct reasons have been given, however, the Revenue had issued notice under Section 143(2) of the Act on 15.09.2021, where, they have given certain additional or expanded reasons, for which, further clarification was required by way of Annexure to the said notice issued under Section 143(2) of the Act.

9.Except the said additional or expanded reasons set out in the Annexure to Section 143(2) notice, no other reason had been given as a basic and fundamental reason as to how the Assessing Authority has satisfied or 'reason to believe' that there has been an escape of assessment with a result, it requires a reopening under Section 147 of the Act. Therefore, the petitioner / assessee had chosen to give reply and objections in respect of the reasons cited in the Annexure to Section 143(2) notice dated 15.09.2021. The said objection raised by the petitioner has been rejected through the order dated 23.12.2021. Aggrieved over the said orders, the assessee is trigerred to file this writ petition, challenging Section 148 notice as well as the rejection order dated 23.12.2021 in this writ petition.

10. Mr.R.V.Easwar, learned Senior Counsel, assisted by Mr.N.R.R.Arun Natarajan, learned counsel appearing for the petitioner/assessee, would contend that, even though pursuant to the earlier two searches conducted on 12.05.2012 and 19.05.2016, the assessment was completed under Section 143(3) of the Act including the scrutiny assessment, thereafter, the third search was conducted on 06.08.2019, pursuant to which, that proceedings were initiated for six years preceding to the search under Section 153(A) of the Act, which is also a subject matter in the writ petitions, which have been filed before this Court, wherein interim order was granted. Merely because Section 153A proceedings can maximum cover only six years preceding to the search, which ended by Assessment Year 2014-15, they invoked Section 147 of the Act to reopen it for the Assessment Year 2013-14. Accordingly, they issued a notice under Section 148 of the Act on 30.03.2021.

11. In this context, learned Senior Counsel would point out that, as per the law laid down by the Hon'ble Supreme Court in GKN Driveshafts (India) Ltd Vs. Income Tax Officer and others dated 25.11.2002 reported in [2003] 259 ITR 19 (SC), what shall be the procedure to be adopted, if a notice under Section 148 is issued for reopening the assessment under Section 147 of the Act, has been stated.

12.In this context, learned Senior Counsel relied upon paragraph 5 of GKN Driveshafts (India) Ltd (cited supra), which reads thus :

“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 noticee 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 noticee 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.”

13. As per the procedure, which has been indicted in the said order by the Hon'ble Supreme Court, the proper course of action for the noticee i.e., the assessee is to file return on receipt of notice under Section 148 of the Act. If he desires so to seek reasons for issuing notice, then, the Assessing Officer is bound to furnish the reasons within a reasonable time. On receipt of reasons, the noticee is entitled to file objections and the Assessing Officer is bound to dispose of the same by passing a speaking order.

14. Only in tune with the said procedures as contemplated in the said decision, in response to Section 148 notice, after filing return, the petitioner has made a request, asking for the reasons in his request dated 19.04.2021, wherein the petitioner has asked the following :

> “4. Kindly issue a copy of the “reasons” on the basis on which the impugned notice has been issued, along with the necessary satisfaction accorded by the Principal Commissioner of Income Tax, (Central), Chennai-I. Upon receipt of the “reasons” and “satisfaction note” and after examining the same, we shall respond to your notice issued under Section 148 of the Income Tax Act, 1961.”

15. Though such a reason was asked for by the petitioner on 19.04.2021, and the said request having been received by the Revenue, an acknowledgment also had been given by affixing their seal dated 19.04.2021, when the petitioner was expecting a statement containing the reasons for reopening under Section 147 would be given to the assessee, nothing has come from them except the notice under Section 143(2) of the Act dated 15.09.2021.

16.The learned Senior Counsel appearing for the petitioner would further contend that, in the said notice under Section 143(2) of the Act, an Annexure has been given, wherein, at paragraph 3, a reason has been stated as if that during the third search, which was also conducted in the premises of one M/s.Aravind Bottle Suppliers, they claimed to have taken some incriminatory documents from the Proprietor of the said bottle suppliers and also claimed that, they obtained a sworn statement under Section 132(4) of the Act dated 08.08.2019, based on which, they sought for clarification from the petitioner/assessee. This could be evidenced from the said notice dated 15.09.2021 issued under Section 143(2) of the Act.

17.In response to the said clarification sought for in the notice dated 15.09.2021, the petitioner had given reply. Based on such reply, now, the order impugned has been passed by the 4th respondent on 23.12.2021, rejecting the said reply given by the petitioner.

18. Tracing these factual matrix, the learned Senior counsel appearing for the petitioner, would contend that, in response to the request made by the petitioner on 19.04.2021, asking the reasons for reopening, no reasons have been given, no communication had been issued. This is in fact mandated as per the judgment of the Hon'ble Supreme Court in GKN Driveshafts case (cited supra). However, straightaway Section 143(2) notice was issued to the assessee on 15.09.2021. Since in the said notice, certain clarifications have been sought for, it become incumbent on the part of the assessee to make such clarification by way of reply to the said Section 143(2) notice, which was given in fact and therefore, that cannot be construed or taken as a reply or an objection to any reasons supplied by the Revenue, pursuant to the reason asked by the petitioner dated 19.04.2021.

19.Therefore, the learned Senior counsel appearing for the petitioner would submit that, insofar as the supply of reasons for the reopening is concerned, which is one of the mandatory phase to be followed, if the assesee choses to ask for the reasons for reopening, since has not been followed, the entire proceedings, which culminated in the impugned order including Section 148 notice, gets vitiated. Therefore, on that ground itself, the impugned orders are liable to be set aside.

20. On the other hand, Mr.A.P.Srinivas, learned Senior Standing Counsel appearing for the respondents/Revenue, would submit that, though two searches had already been conducted, only during the third search conducted in August 2019, certain incriminating documents including the sworn statement of the Proprietor of the proprietary concern i.e., M/s.Aravind Bottle Suppliers, who supplied bottles to the petitioner/assessee, had given a statement and based on which, mainly the Revenue wanted to get further clarification and this has been stated in the notice dated 15.09.2021 issued under Section 143(2), where, it has been specifically mentioned that, further clarification is required on the issue raised as per the Annexure, which is as per the reasons recorded, that means, the reasons for reopening had already been recorded by the Revenue. Based on such reasons recorded, certain further clarifications were required and those further clarifications on what material required for the Revenue

has to be spelt out, that has been stated in the Annexure to the notice under Section 143(2) of the Act and the said Annexure has been replied by the assessee, which was considered and rejected through the order impugned. Therefore, the assessee cannot take a plea that, reason was given by the Revenue and moreover, the reply or objection given by the petitioner/assessee have not been considered in a proper perspective before making the order of rejection, which is impugned herein.

21.In this context, the learned Standing counsel appearing for the Revenue also contended that, once an objection is filed for the issuance of notice, the Assessing Officer is bound to dispose of the same by passing a speaking order as per the law declared by the Hon'ble Supreme Court in GKN Driveshafts case (cited supra) and the said procedure indicated in the order of the Hon'ble Supreme Court has been followed in the present case, where the objections raised by the petitioner have been considered and rejected through the impugned order. Therefore, it does not require any interference from this Court, he contended.

22.I have considered the said rival submissions made by both parties and have perused the materials placed before this Court.

23.Though the issue in this writ petition appears to be a larger one and requires a deep consideration, on hearing the learned Senior Counsel as well as the learned Senior Standing Counsel for the parties and having gone through the materials placed before this Court, it is the considered view of this Court that the issue raised in the writ petition lies in a very narrow compass.

24.Though under the earlier two searches, return was filed, which was accepted and two times Section 143(3) assessment orders were passed, since it was required on the part of the Revenue, they went for the third search on 06.08.2019. During the search in the name of the assessee, the premises of the third party, which was one of the suppliers of bottles to the assessee, also was searched. After searching the premises, it seems that, the Revenue found certain incriminatory documents as claimed by them, based on which, they claimed to have obtained a sworn statement under Section 132(4) of the Act dated 08.08.2019 from the Proprietor of the said third party concerned i.e., M/s.Aravind Bottle Suppliers. If this is the reason for reopening under Section 147 of the Act, that should have been revealed or stated by the Revenue in response to the request made by the assessee on 19.04.2021. In 19.04.2021 request, the assessee has made a clear request that issue a copy of the reasons, on the basis of which, the impugned notice has been issued. In response to the said 19.04.2021 request, no communication, stating the reasons for reopening under Section 147 of the Act has been issued by the Revenue. However, notice under Section 143(2) of the Act was issued on 15.09.2021, where, they have stated that, they need a further clarification on certain issues, which are, as per the reasons recorded and those issues have been mentioned in the Annexure. Along with the notice, an Annexure has been made, where the aforestated i.e., the search conducted in the premises of M/s.Aravind Bottle Suppliers and the alleged sworn statements obtained from the Proprietor etc., had been divulged only as a reason in the Annexure to get additional clarification.

25. It is to be noted that, in Section 143(2) notice dated 15.09.2021, it has been specifically stated that what is the issue or what all are the issues, on which, further clarification is required as per the Annexure.

26.Therefore, it goes without saying that, what has been stated in Section 143(2) notice, is not a real reason recorded already by the Assessing Authority for his satisfaction and 'reason to believe' that there has been an escaped assessment.

27.However, the Hon'ble Supreme Court in GKN Driveshafts case (cited supra) has made it very clear that, if the assessee desires to seek for reasons for issuing notices, it is open to the assessee to seek such reasons and once the reasons are sought for, the Assessing Officer is bound to furnish the reasons within a reasonable time.

28.Therefore, it becomes mandatory on the part of the Assessing Officer to give reasons, if it is asked for.

29.Herein the case in hand, in 19.04.2021, request the reason has been asked for by the petitioner, though it is bound to be decided and reasons to be given by the Assessing Officer within a reasonable time, till the 143(2) notice was issued, nothing has been given and no reasons have been divulged even till today.

30.Since Section 143(2) notice had come, as the assessee had no other option, except to give reply otherwise, some punitive provisions since are available in the Act, which may attract for non-replying to the notice under Section 143(2) of the Act, he might have chosen to give reply and that reply, if at all to be considered as an objection, that can only be treated as a reason / objection only in respect of additional clarification sought for by the Assessing Officer under Section

143(2) of the Act because the said reasons stated in the Annexure is Annexure to Section 143 (2) notice only. Therefore, these factual matrix, undoubtedly, revealed that, in response to the reason asked by the petitioner vide his request dated 19.04.2021, which request having been received and acknowledged by the Assessing Officer, no statement of reasons for reopening has been given though it is mandated pursuant to the judgment of the GKN Driveshafts case (cited supra).

31.In view of the said failure on the part of the Revenue in furnishing the reasons, this Court has no hesitation to hold that, the entire proceedings, which culminated in the impugned order, whereby rejection has been made to the objections/reply submitted by the petitioner/assessee, of-course, pursuant to the notice dated 15.09.2021 issued under Section 143(2) is vitiated and therefore, the said impugned order is liable to be set aside and the matter can be remitted back to the Revenue for initiating the exercise afresh from the stage, where, the petitioner/assessee has asked the reasons by his request dated 19.04.2021. In response to the same, the Assessing Officer shall furnish the statement of reasons for reopening under Section 147 of the Act as indicated in the order of the Hon'ble Supreme Court in GKN Driveshafts case (cited supra).

32.In view of the aforestated, the following orders are passed in this writ petition:-

(i) That the impugned order dated 23.12.2021 having Ref.No.ITBA/AST/F/17/2021-22/1038058832(1) issued by the 4th respondent is set aside;

(ii) The matter is remitted back to the respondents for reconsideration. While reconsidering the same, the procedure contemplated or indicated in the order of the Hon'ble Supreme Court in GKN Driveshafts case (cited supra) shall be scrupulously followed and the Assessing Officer is bound to give the reasons sought for by the petitioner in his request dated 19.04.2021. Such a mandatory requirement shall be fulfilled by the Assessing Officer within a reasonable time as indicated by the Hon'ble Supreme Court of India and thereafter, it is open to proceed the matter by both sides;

(iii) It is made clear that once the statement of reasons is given or revealed pursuant to the aforesaid directions, the assessee is entitled to give his reply/objections and the same shall be considered and proceeded further by the Assessing Officer.

33.With these observations and directions, this writ petition is ordered. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

kak/sp

To

1.The Principal Director of Income Tax (Investigation),
Income Tax Investigation Wing Building,
No.108, MG Road, Nungambakkam,
Chennai - 600 034.

2.The Deputy Director of Income Tax (Investigation),
Unit 2(2), Chennai,
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4.Assistant Commissioner of Income Tax,
Central CIR 3(2), Chennai Investigation Building,
New No.46, (Old No.108),
Mahatma Gandhi Road,
Chennai - 600 034.

+1cc to Mr.N.R.R.Arun Natarajan, Advocate SR.No.12530

W.P.No.2681 of 2022

MG(CO)
GN(29/03/2022)