IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.02.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No. 2571 of 2022
and WMP.No.2696 & 2698 of 2022

M/s. Renault Nissan Automotive India Private Limited,
Represented by its Authorised Signatory,
Mr.Prantap Kalra
Plot No.1, SIPCOT Industrial Estate, Mattur Post,
Orgadam, Sriperumbudur Taluk,
Chennai – 602 105. …. Petitioner

-Vs-

1. Additional/Joint/Deputy/Assistant Commissioner of Income Tax Income-Tax Officer, National 3-Assessment Centre, Delhi.

2. The Principal Chief Commissioner of Income Tax, National E-Assessment Centre, Income Tax Department, Delhi.

3. Deputy Commissioner of Income-Tax, Circle 1, LTU, New Building, Nungambakkam, Chennai. …. Respondent

Writ Petitions under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, to call for the records on the file of the respondents and quash the impugned order in PAN AADCR7965B dated 03.01.2022 in DIN and Letter No.ITBA/AST/F/17/2021-22/1038376851(1) along with impugned notice dated 30.03.2021 in PAN AADCR7965B issued under Section 148 of the Act veering DIN and Letter No.ITBA/AST/S/148/2020-21/1031920338(1) dated for the subject AY 2014-15.

For Petitioner : Mr.N.V.Balaji

For Respondents : Mrs.Hema Murali Krishnan
Senior Standing Counsel

O R D E R

The prayer sought for herein is for a writ of certiorari, to call for the records on the file of the respondents and quash the impugned order in PAN AADCR7965B dated 03.01.2022 in DIN and Letter No.ITBA/AST/F/17/2021-22/1038376851(1) along with impugned notice dated 30.03.2021 in PAN AADCR7965B issued under Section 148 of the Act veering DIN and Letter No.ITBA/AST/S/148/2020-21/1031920338(1) dated for the subject AY 2014-15.

2. The petitioner is engaged in the business of manufacture and assembly of Completely Built Units for sale to Group Companies and further sale to export and domestic markets. For Assessment Year 2014-15, the petitioner filed its return of income electronically on 29.11.2014 paying Minimum Alternate Tax ("MAT") under Section 115JB of the Income Tax Act,1961[in short, 'the Act']. The petitioner subsequently revised its return of income on 23.11.2015 against discharging taxes under MAT.

3. Thereafter, the respondent initiated regular assessment proceedings for Assessment Year 2014-15 by issuing notice under Section 143 (2) of the Act on 28.08.2015 followed by notice under Section 142 (1) of the Act, calling for evidence/information.

4. According to the assessee, after the input or response supplied to the said notices by the assessee, after careful examination of the said submission of the petitioner's side, the third respondent concluded the proceedings by passing a draft assessment order under Section 143 (3) of the Act read with Section 92 CA and 144C (1) of the Act, wherein an adjustment on account of Transfer Pricing (TP) as proposed by the Transfer Pricing Officer was made.

5. It is the further case of the petitioner that, in the course of the assessment proceedings, the petitioner disclosed fully and truly all material facts necessary for its assessment as sought for by the third respondent. Ultimately, the third respondent passed the final assessment order dated 30.10.2018, as against which, the petitioner filed appeal before the Income Tax Appellate Tribunal (ITAT), where the appeal is pending.

6. Thereafter, the third respondent, having taken note of the modified return furnished by the petitioner, passed an order modifying the assessment on 30.11.2021, whereunder, the Transfer Pricing adjustment as made under the final assessment order was deleted. The third respondent also issued notice under Section 148 of the Act for the Assessment Year 2014-15 on 30.03.2021, which according to the petitioner has been issued after the expiry of 4 years, stating that allegedly the income has escaped assessment.

7. In the said notice under Section 148 of the Act or even in the earlier rejection order of the primary objection in this regard by the petitioner making objections nowhere the third respondent has stated that he has reason to believe that there has been escaped assessment during the relevant Assessment Year because of the non-disclosure of details fully and truly as expected, by the assessee.

8. Therefore, on the main ground that the notice issued by the Revenue under Section 148 of the Act is beyond the limitation of 4 years period, in the absence of specific reason to be recorded as stated above to have the extended limitation of 6 years, the said notice is vitiated. Therefore, among other grounds, this prime ground has been raised by the petitioner to have successful challenge against the impugned order.

9. In support of the said ground as projected by the petitioner Mr.N.V.Balaji, learned counsel appearing for the petitioner though made detailed submissions with minute details on the assessment already made for the relevant Assessment Year i.e, 2014-15, would also submit that, under proviso to unamended Section 147 of the Act, the period of limitation is four years within which, Section 147 proceedings should be initiated that too only after having recorded the reasons on the part of the Revenue to say that the Assessing Officer has reason to believe that there has been an escaped assessment.

10. Since the 4 years limitation period in this case is over as early as on 31.03.2019 and now the notice under Section 148, which is impugned herein, was issued on 30.03.2021 clearly it is beyond the limitation, therefore absolutely the respondent does not have any jurisdiction to issue such notice to proceed further with the proceedings initiated under Section 147. This in fact, according to the learned counsel for the petitioner, is the prime ground under which, the petitioner has chosen to approach this Court by filing this writ petition by invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

11. In support of this case, the learned counsel would further contend that, if we take up the content made in the impugned notice dated 30.03.2021, nowhere it is stated that because of the particular reason, the Assessing Officer has reason to believe that the income of the assessee for the Assessment Year 2014-15 has escaped assessment within the meaning of Section 147 of the Act.

12. The learned counsel would also submit that, after issuance of Section 148 notice, objection against the initiation of proceedings under Section 147 has been made in detail by the petitioner / assessee on 21.12.2021, where several grounds were raised including the prime ground referred to above and that has not been considered by the respondents or the consideration was not in proper perspective.

13. In this context, particularly, the learned counsel pointed out that, the reason to believe should have been recorded that on what material or basis, the Assessing Officer has reason to believe that there has been an escaped assessment for the particular assessment year on the part of the assessee, which is mandated by decisions of the law Courts. The rejection order made on the objection of the petitioner / assessee by order dated 03.01.2022, according to the learned counsel for the petitioner, is completely vitiated. Therefore, he seeks indulgence of this Court against these orders, which are impugned herein.

14. In support of this ground raised in this regard as stated above, the learned counsel for the petitioner has mainly relied upon the Hon'ble Division Bench decision of this Court in the matter of Commissioner of Income-tax, Chennai Vs. Schwing Stetter India (P) Ltd. [reported in (2015) 378 ITR 380 (Madras)], where the ultimate proposition as has been held by the Hon'ble Division Bench reads thus:

> "22. In the light of the above, we hold that when the Assessing Officer had failed to record anywhere his satisfaction or belief that the income chargeable to tax had escaped assessment on account of the failure of the assessee to disclose truly and fully all material facts necessary for assessment, the notice issued under Section 147 of the Income Tax Act beyond the period of four years was wholly without jurisdiction and cannot be sustained."

15. Relying upon this judgment heavily, the learned counsel would contend that, if there is any failure on the part of the Assessing Officer to record anywhere his satisfaction or belief that the income chargeable to tax had escaped assessment on account of the failure of the assessee to disclose truly and fully all material facts necessary for assessment, certainly the notice issued under Section 148 i.e., the proceedings followed by rejection order under Section 147 are wholly without jurisdiction in the words of the Hon'ble Division Bench referred to above. Therefore, in the present case, assuming that if the Revenue want to fit the case of the petitioner under the last limb of the proviso to Section 147 i.e., because of the non-disclosure of the

materials fully and truly by the assessee, that kind of escaped assessment now has been noticed and that is the reason to believe on the part of the assessing authority to initiate proceedings under Section 147 and therefore, on such a fitment on the part of the Revenue in the last limb of the proviso to Section 147, the assessee's case cannot stand in the legal scrutiny, if the principle laid down in the Hon'ble Division Bench judgment cited supra is applied. Therefore, the learned counsel seeks indulgence of this Court in this regard.

16. On the other hand, Mrs.Hema Muralikrishnan, learned Senior Standing counsel appearing for the respondent/Revenue, would submit that, insofar as the four years limitation as claimed by the petitioner by quoting the proviso to Section 147 is concerned, though there are four situations mentioned in the said proviso, the petitioner's case certainly would come under the purview of the fourth limb namely to disclose fully and truly all material facts necessary for his assessment for that Assessment Year.

17. The learned Standing counsel would further submit that, merely because in the original assessment, the petitioner has filed assessment under Section 139 and subsequently, after notice issued under Section 143, revised assessment also has been made, where the return filed by the petitioner with or without modification had been accepted and assessment order has been passed by the Revenue under Section 143(3) of the Act that would not ipso facto give rise to the petitioner / assessee to claim that he has fully and truly disclosed all material facts at the time of original assessment or revised assessment.

18. In aid of this, the learned Standing counsel has relied upon Explanation 1 of the Proviso to Section 147, where it is stated that, production before the Assessing officer of account books or other evidence from which material evidence come with due diligence have been discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of the foregoing proviso.

19. By relying upon this Explanation 1, the learned Standing counsel would vehemently content that in these cases, assuming that the petitioner’s return was accepted and assessment was completed for which the petitioner had disclosed certain material/books of accounts etc., that alone would not be considered to be full and true disclosure to go to a safe conclusion that the petitioner is not liable to be fit in in the 4^{th} limb of the first proviso to Section 147.

20. Suppose the Assessing Officer has come to the conclusion, of course, prima facie by way of any scrutiny that the assessee has not fully or truly submitted the materials, as a result of which, there has been an escaped assessment for a particular assessment year, certainly that can be reopened by way of initiation of proceedings under Section 147 of course, in a normal circumstances, within four years and in special four circumstances mentioned in the proviso to Section 147 of the Act, within 6 years.

21. Herein the case in hand, the fourth special circumstance mentioned in first proviso to Section 147 would be squarely applicable to the facts of the petitioner's case. Four years limitation has to be extended to six years and in that case, the present notice issued under Section 148 of the Act on 13.03.2021, which is impugned herein is well within the 6 years limitation period. Therefore, the point raised by the petitioner counsel in this regard cannot be countenanced, she contended.

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

23. Though to some extent detailed arguments were advanced by the learned counsel appearing for the petitioner, for the purpose of disposal of this writ petition, as the grounds available for the petitioner to urge before this Court by invoking the extraordinary jurisdiction of this Court under Article 226 in Revenue matters are very limited, out of which, since the petitioner counsel raised a point of jurisdiction on the basis of limitation, where the petitioner counsel is able to cite a decision of Hon'ble Division Bench of this Court cited in the aforesaid decision in Schwing Stetter India (P) Ltd., case, where it has been held in clear terms by the Hon'ble Division Bench that when the Assessing Officer had failed to record anywhere his satisfaction or belief that the income chargeable to tax had escaped assessment on account of the failure of the assessee to disclose truly and fully all material facts necessary for assessment, whether the notice issued under Section 147 of the Act beyond the period of four years was wholly without jurisdiction or not should be gone into.

24. Taking the aid of this proposition, if we apply the same in the present facts of the case, it would disclose that, in the present case, no doubt, it is beyond four years limitation, however, within the six years period. If it is beyond four years and within the six years period, even according to the first proviso to Section 147, four special circumstances have been mentioned. It is a case of the Revenue

also that, the case of the petitioner can be fit in only in the fourth circumstance, where failure to fully and truly disclose all materials, which are necessary for his assessment. It is one of the reason under which, if the Assessing Officer has reason to believe that there has been escaped assessment then under Section 147 of the Act proceedings can be initiated. If that being so, in the present case in fact, a detailed objection had been made by the petitioner on 21.12.2021 against the initiation of proceedings under Section 147. Though the said objection has been rejected through the impugned communication dated 03.01.2022, as has been rightly pointed out by the learned counsel appearing for the petitioner, the prime reason or objection cited by the petitioner side against the point of limitation by showing the fact that the Assessing Officer has not recorded any specific reason as to how he has come to a belief that there has been an escaped assessment, whether has been considered or not is to be looked into.

25. On a cursory reading of the order of rejection dated 03.01.2022 discloses that, the specific objection made in this regard by the petitioner has not been properly considered or not even mentioned.

26. Moreover in the Section 148 notice dated 30.03.2021 only, it has been stated that the Assessing Officer have reasons to believe that the assessee's income chargeable to the tax for the Assessment Year 2014-15 had escaped assessment within the meaning of Section 147 of the Act and has further been stated that the Assessing Officer proposed to assess or reassess the income/loss for the Assessment Year, hence, he required the assessee to deliver, within 30 days, from the service of the notice, a return of the prescribed form for the said Assessment Year.

27. In the case in hand, when the reasons for reopening under Section 147 was given by the Assessing Officer by his proceedings/notice dated 23.08.2021, he has stated the following:

> "Subject: Reasons for reopening under Section 147.
>
> The assessee has claimed Rs.72,80,23,017/- as "any other amount allowable as deduction"in return of income. As seen from Form 3CD, income to be taxed under Section 41 was Rs.77,28,25,446/- representing provision no longer required.
>
> Amount credited to P & L account in this account was Rs.103,61,50,000/-. It this is taken into account, the deduction to be allowed

would be Rs.26,33,24,554/- (1,03,61,50,000-77,28,25,446). This excess claim of Rs.464698463/-(72,80,23,017-26,33,24,554) needs to be disallowed."

28. Though certain figures have been stated therein, it has not been specifically stated as to why Assessing Authority has reason to believe, that there has been no disclosure fully and truly with all material facts, which are necessary for his assessment for the concerned year.

29. In this context, it has been pointed out by the learned counsel appearing for the petitioner that, in the very return submitted by the petitioner, all these figures mentioned in the order dated 23.08.2021 of the respondent has been disclosed.

30. If there is any alleged excess claim as stated by the Assessing Officer in his proceedings dated 23.08.2021 as quoted herein above, along with the same the specific reason has to be given that how the officer has prima facie come to the conclusion that because of non-disclosure of the material fully and truly as expected from the assessee, this alleged escaped assessment has occurred. This is what expected under law and this is the proposition held by the Hon'ble Division Bench of this Court in the cited judgment.

31. When that being the position, the present notice issued on 30.03.2021 under Section 148 of the Income Tax Act along with the rejection order dated 03.01.2022 of the objection raised by the petitioner cannot be stated to be the justifiable orders within the meaning of law laid down by this Court in the aforesaid Division Bench judgment.

32. No doubt, under Section 148 notice, the minimum statement is enough, where, the detail as to how the Assessing Officer concerned has reason to believe that there has been an escaped assessment, need not be disclosed. But, in the communication giving reasons for re-opening, it should have been stated. Moreover, in the rejection order dated 03.01.2022, when this reason was specifically objected to, that should have been also dealt with by giving reasons as to why the objection raised by the petitioner against the limitation i.e., beyond four years up to six years has to be rejected. In the absence of any such reasons stated in the rejection order dated 03.01.2022 on the specific objection raised in this regard by the petitioner, this Court feel that even that rejection order may not be justifiable as it is not in the expected line within the meaning of the

provisions of law as well as the decision made by the law Courts.

33. Therefore, this Court feels that in order to rectify these violations or mistakes before proceeding further in the Section 147 proceedings, the matter can be remitted back to the respondent.

34. For all these reasons, this Court is inclined to dispose of this writ petition with the following order:

- That the impugned order dated 03.01.2022 is set aside and the matter is remitted back to the respondent for reconsideration. While reconsidering the same, the objection given by the petitioner shall be considered objectively by the respondent / assessing authority within the parameters as has been indicated especially in the context of first proviso to Section 147 and also the law laid down by the Hon'ble Division Bench in Schwing Stetter India (P) Ltd., case. After having considered the same, a reasoned order shall be passed meeting this point discussed above and any other possible ground to be raised or urged by the petitioner. Depending upon such order to be passed considering the objections and still the assessing authority believes that he has reason to proceed under Section 147, it is open to them to act accordingly.

35. With these observations and directions, this writ petition is disposed of. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-IX)

//True copy//

Sub Assistant Registrar

mp/kak

To

1. Additional/Joint/Deputy/Assistant Commissioner of Income Tax Income-Tax Officer, National 3-Assessment Centre, Delhi.

2. The Principal Chief Commissioner of Income Tax,
National E-Assessment Centre,
Income Tax Department, Delhi.

3. The Deputy Commissioner of Income-Tax,
Circle 1, LTU,
New Building, Nungambakkam,
Chennai.

+1cc to Mr.N.V.Balaji, Advocate SR.No.9621

+1cc to Mrs.Hema Murali Krishnan, Advocate SR.No.8901

Writ Petition No. 2571 of 2022

MT(CO)
GMY(28/03/2022)