IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.11.2022

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

WP.Nos.3360, 3362 & 3363 of 2020 and
WMP.Nos.3907, 3906 & 3908 of 2020 and
WMP.Nos.24567, 24570 & 24571 of 2022

M/s.MIPP International Limited,
Represented by Authorised Signatory
Shri.P.K.Vijayaraghavan,
Third floor, Standard Chartered Tower,
No.19, Cybercity, Ebene,
Mauritius – 72201. ... Petitioner in all WPs

Vs

1.Assistant Commissioner of Income Tax,
International Taxation, Circle (2),
BSNL Building, Room No.408,
4th Floor, Tower-1,
No.16, Greams Road, Chennai-600 006.

2.Commissioner of Income Tax,
International Taxation,
BSNL Building, 4th Floor, Tower-1,
No.16, Greams Road,
Chennai-600 006. ... Respondents in all WPs

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records on the file of the First Respondent and quash the impugned draft assessment order dated 30.12.2019 passed by the First Respondent in PAN AAMCM1172A under section 143(3) read with section 147 read with section 144C(1) of the Income Tax Act, 1961 for the Assessment Years 2012-13, 2013-14 and 2014-15.

(In all WPs)
For Petitioner : Mr.N.V.Balaji

For Respondents : Mrs.Hema Muralikrishnan
Senior Standing Counsel

COMMON ORDER

These three writ petitions challenge orders of draft assessment passed under Section 143(3) r/w Section 147 r/w 144C(1) of the Income Tax Act, 1961 (in short 'Act').

2.The petitioner is a tax resident of Mauritius and has not filed returns of income in India. Though several grounds have been raised in the writ petitions assailing the impugned orders, the sole ground raised and argued before me relates to the violation of the procedure for re-assessment as set out by the Hon'ble Supreme Court in the case of *GKN Driveshafts (India) Vs. Income Tax Officer* (259 ITR 19).

3.The procedure is set out in the following terms:

'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.'

3.In these cases, all events upto the stage of filing of objections by the petitioner have been completed and the petitioner has filed objections on 12.07.2019 raising objections to the assumption of jurisdiction for re-opening of the assessment under Section 147 of the Act.

4.Admittedly, no order disposing the objections have been passed by the respondents. In such circumstances and both learned counsel would agree procedure as per the judgment in the case of *GKN Driveshafts* (supra), is to be followed. Hence, the following directions are issued:

(i) impugned draft assessment orders dated 30.12.2019 are set aside;

(ii) the petitioner will appear before the assessing authority on Monday, the 28th of November, 2022 at 10.30 a.m. without expecting any further notice in this regard, along with a copy of the objections filed by it and supporting material as well as case law that it relies upon;

(iii) the petitioner will be heard in detail and orders passed on the aspect of assumption of jurisdiction, within a period of three (3) weeks thereafter i.e. on or before 19.12.2022. If the respondents concur with the same, the matter will end there;

(iv) In the alternative, proceedings for assessment will continue to be concluded in accordance with law, within a period of eight (8) weeks from 19.12.2022..

5.These writ petitions are disposed in the above terms. No costs. Connected miscellaneous petitions are closed.

14.11.2022

Index : Yes / No
Speaking Order
vs

To

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Dr.ANITA SUMANTH,J.

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