IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2022

CORAM :

THE HONOURABLE MR. JUSTICE **R.SURESH KUMAR**

W.P.Nos.5597 & 5609 of 2022
and
W.M.P.Nos.5695, 5699, 5701 & 5702 of 2022

M/s.Bengal Tiger Line (India) Private Limited,
KGN Towers, 7th Floor, 'A' Wing,
No.62, Ethiraj Salai,
Egmore, Chennai – 600 105,
Represented by its Director,
Shri.C.Ravi. ...Petitioner in both WPs

Vs.

1.The Deputy Commissioner of Income Tax,
Corporate Circle – 1(1),
121, Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034.

2.The Assessing Officer/Income Tax Officer,
National Faceless Assessment Centre,
Income Tax Department,
Ministry of Finance,
New Delhi. ...Respondents in both WPs

Common Prayer : Writ Petitions filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records of the respondents and quash the impugned notices issued by 1st respondent under Section 148 of the Act in PAN:AAACB1369A in DIN & Notice No:ITBA/AST/S/148/2020-21/1031866988(1) dated

29.03.2021 and ITBA/AST/S/148/2020-21/1031598870(1) dated 18.03.2021 and the consequential orders disposing off objections passed by 2nd respondent in DIN & Notice No:ITBA/AST/F/17/2021-22/ 1037055956(1) dated 18.11.2021 and ITBA/AST/F/17/2021-22/ 1039526277(1) dated 08.02.2022 for the Assessment Years 2015-16 and 2013-14.

For Petitioner (in both WPs) : Mr.S.P.Chidambaram

For Respondents (in both WPs) : Mrs.Hema Muralikrishnan
Senior Standing Counsel

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COMMON ORDER

Since the issue raised in both the writ petitions is one and the same, with the consent of the learned counsel appearing for both sides, these writ petitions were heard together and are being disposed of by this common order.

2. The Assessment Year is 2013-14 and 2015-16. In respect of which, notices under Section 148 of the Income Tax Act, 1961 (in short 'the Act') to reopen under Section 147 of the Act has been issued by the respondent-Revenue on 18.03.2021 and 29.03.2021 respectively.

3. Pursuant to the notices issued under Section 148 of the Act, after filing the return, the assessee sought for the reasons for such reopening under Section 147 of the Act. In response to the same, the respondent-Revenue has given the reasons, not accepting the said reasons, objections had been filed by the assessee in both the cases. Having considered the said objections, the Revenue had rejected the same through orders dated 18.11.2021 and 08.02.2022. This 18.11.2021 order relates to the Assessment Year 2015-16 and 08.02.2022 order relates to the Assessment Year 2013-14. Challenging these orders, the present writ petitions have been filed with the aforesaid prayer.

4. Heard Mr.S.P.Chidambaram, learned counsel appearing for the petitioner, who would submit that, the reasons cited for reopening under Section 147 of the Act by the Revenue is not tenable for the reasons that, in the earlier year i.e., the Assessment Year 2011-12 itself, the alleged income, which had been shown as the reason to believe for reopening, had already been disclosed by the petitioner-assessee and insofar as the current Assessment Years which are in question i.e., the Assessment Years 2013-14 and 2015-16 are concerned, absolutely there has been no suppression of any such income or non-disclosure of such income.

Therefore, the reason that, there has been a net freight of Rs.29,50,53,532/- collected through the Indian Subsidiary i.e., the assessee company after allowing the expenditure has escaped assessment, cannot be the proper reason for reopening.

5. He would also submit that, if at all the petitioner company being the subsidiary at Indian soil is to be treated as a subsidiary company and earned through the transaction that, they had through the foreign company, the income if at all anything earned by the foreign company cannot be treated as an income of the subsidiary company, unless and until, the subsidiary company has earned such income and the same if it is not disclosed.

6. Here in the case in hand, according to the learned counsel appearing for the petitioner, the very reasoning given for reopening the assessment under Section 147 of the Act itself is without any substance. Therefore, based on which, the reopening cannot be permitted to go on. Hence, challenging the orders issuing notices under Section 148 of the Act for reopening as well as the rejection orders rejecting the objections raised by the petitioner in both the cases, since these writ petitions have

been filed, those orders are liable to be set aside and the writ petitions may be allowed, he contended.

7. Heard Mrs.Hema Muralikrishnan, learned Senior Standing Counsel appearing for the respondents, who would submit that, it is the settled proposition that, with regard to the reopening of assessment under Section 147 of the Act at the time of issuing the notices under Section 148, the mere saying of the belief on the part of the Assessing Authority with reasons that there has been an escaped assessment is enough and thereafter only after filing the return, if they asked for a reason, reason would be given and in these cases also, reasons have been given. That reasons even though has been objected, the said objections, having been considered, are rejected through the impugned orders, where the respondent-Revenue has clearly stated that, how there has been an escaped assessment during the relevant Assessment Years in these two cases and therefore, whether the said escaped assessment is to be assessed once again under the reopening process is to be ultimately decided after getting the defence and reply from the petitioner-assessee, for which, the petitioner assessee is expected to co-operate with the Revenue and if ultimate order is passed revising the assessment under

Section 147 of the Act, the remedy open to the petitioner-assessee is to prefer an appeal. Therefore, at the threshold, the power vested with the Revenue in reopening the assessment under Section 147 of the Act cannot be curtailed and therefore, the present attempt made by the petitioner-assessee in filing these writ petitions challenging the reopening process including the order of rejection made on the objections raised by the petitioner are untenable and therefore, on that ground, the learned Senior Standing Counsel seeks dismissal of these writ petitions.

8. I have considered the said rival submissions made by the learned counsel appearing for the parties.

9. Insofar as the reopening of the assessment under Section 147 of the Act by issuing notice under Section 148 of the Act is concerned, the issue has been settled by the Hon'ble Supreme Court in the case of ***GKN Driveshafts (India) Ltd Vs. Income Tax Officer and others*** reported in (*2003) 1 SCC 72,* where, the Hon'ble Supreme Court has stated the following :

> *"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."

10. Under the said procedure contemplated by the Hon'ble Supreme Court, notices were issued under Section 148 of the Act, pursuant to which, return was filed by the petitioner for the relevant assessment years, thereafter, reasons were sought for, reasons were given by the Revenue, those reasons have been objected.

11. Those objections having been considered, now, rejection orders have been passed by the respondent-Revenue. Therefore, absolutely there has been no procedural irregularity available in these cases.

12. Insofar as the reason for reopening is concerned, as has been stated above, the petitioner being the Indian Subsidiary Company of a foreign company called M/s.BTL Cyprus had earned income, according to the Revenue, and the said income has not been brought or rooted through the P & L account i.e., the Profit and Loss Account of the relevant Financial Year and this has been unearthed subsequently only by the Revenue and *prima facie*, according to the Revenue, there has been a net freight of Rs.29,50,53,532/- collected through the Indian Subsidiary company after allowing the expenditure, which according to the Revenue, is escaped assessment.

13. Though it was vehemently contended by the learned counsel appearing for the petitioner that, these kind of transactions and the income derived by the assessee company had already been disclosed in the earlier years, whether that would preclude the Revenue from reopening the assessment for the present Assessment Years i.e., 2013-14 and 2015-16 is concerned, it has to be gone into only by the Assessing Authority, before whom certainly the assessee can make his defence by producing books of accounts, documents, reply, etc.,

14. These kind of minute details cannot be gone into by this Court by exercising its extraordinary jurisdiction under Article 226 of the Constitution.

15. If at all any procedural irregularities or violation of the statute or if the Revenue acted upon against the principle laid down by the Hon'ble Supreme Court in dealing with cases for reopening under Section 147 of the Act, only in those circumstances, this Court can show its indulgence at the threshold, against the very reopening of the assessment itself under Section 147 of the Act.

16. Here no such situation has arisen after having gone through the documents, which are placed before this Court, especially on the reasons for reopening.

17. The procedural formalities have alreay been complied with in these cases as directed by the Hon'ble Supreme Court in ***GKN Driveshafts*** case and therefore, on that ground also, no interference is called for against the Revenue on these impugned orders.

18. Therefore, this Court feels that the impugned orders are to be sustained and the assessment process already commenced by invoking the Section 147 of the Act can go on. It is for the petitioner to make his defence by producing the records with regard to the objections and to the satisfaction of the Revenue Authorities and it is for them to consider and take ultimate decision as to whether the assessment already been concluded under Section 143(3) of the Act is to be revised and a revised assessment has to be made in view of the reopening already been made under section 147 of the Act. These are all the matters to be gone into only by the Assessing Authority. Therefore, on these aspects, this Court has no reason to interfere.

19. In that view of the matter, this Court is inclined to dispose of these writ petitions with the following orders :

(i) That the impugned orders are sustained and therefore, the writ petitions are liable to be dismissed, accordingly, are dismissed. However, it is open to the petitioner-assessee to take all his defence before the Assessing Authority, before whom, whatever the documents, books of accounts are to be submitted, they can do so and once such defence have come from the petitioner-assessee, the same shall be taken into account objectively and ultimate decision shall be taken by the Assessing Authority by giving a personal hearing to the petitioner-assessee and if need arises, assessment order can be passed accordingly.

20. With these observations, both the Writ Petitions are dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

16.03.2022

Internet : Yes / No
Index : Yes / No
Speaking order / Non Speaking order

Note: Issue order copy on **18.03.2022**

sp/sgl

To

1.The Deputy Commissioner of Income Tax,
Corporate Circle – 1(1),
121, Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034.

2.The Assessing Officer/Income Tax Officer,
National Faceless Assessment Centre,
Income Tax Department,
Ministry of Finance,
New Delhi.

R.SURESH KUMAR, J.

sp/sgl

W.P.Nos.5597 & 5609 of 2022

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