IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.04.2022

CORAM

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

WRIT APPEAL NO.831 OF 2022
AND
C.M.P.NO.5612 OF 2022

Pandiyan Paper Company,
Old No.132-A, New No.298,
1st Agraharam,
Salem - 636 001. ... Appellant

Versus

The Income Tax Officer,
Ward - 1(1),
Income Tax Office,
No.3, Gandhi Road,
Salem - 636 007. ... Respondent

PRAYER:-

Appeal filed under Clause 15 of Letters Patent against the order passed by this Court in W.P.No.186 of 2022, dated 10.01.2022.

PRAYER IN W.P.NO.186 OF 2022:-

Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorari calling for the records of the respondent dated 30.03.2021 in DIN:ITBA/AST/S/148/2020-2021/1031908779(1) issued under Section 148 of the Income Tax Act, for the assessment year 2014-2015 in PAN:AAGFP4598J and quash the same.

For Appellant : Mr.R.Janakiraman

For Respondent : Mr.A.P.Srinivas
Senior Panel Counsel

JUDGMENT

[Judgment of the Court was delivered by R.MAHADEVAN,J]

This Writ Appeal is directed against the order dated 10.01.2022 passed by the learned Judge in W.P.No.186 of 2022 filed by the appellant herein.

2. The appellant company is a firm engaged in the business of wholesale trading of paper products and stationeries. They filed their return of income on 25.11.2014 for the assessment year 2014-15, declaring a total income of Rs.9,31,000/-. On scrutiny of the return, notices dated 28.08.2015 and 07.04.2016 were issued under Section 143 (2) of The Income Tax Act (in short, "the Act") calling upon the appellant to produce certain material evidence for the said assessment year. The appellant submitted their reply along with all material evidence before the authority and on consideration of the same, the respondent completed the assessment under Section 143(3) of the Act, accepting the return of income filed by the appellant, vide order dated 07.10.2016.

3. While so, after five years, the respondent issued a notice dated 30.03.2021 to the appellant under Section 148 of the Act for re-opening the assessment on the ground that certain income chargeable to tax for the assessment year 2014-15 has escaped assessment. In response, the appellant filed their return of income on 16.04.2021 admitting the same income of Rs.9,31,100/- and also requested the respondent to furnish the reasons for reopening the assessment. Accordingly, the respondent uploaded in the ITBA portal on 09.07.2021 the reasons for re-opening the assessment. Upon noticing the same, the appellant by its letter dated 12.07.2021 requested the respondent to drop such proceedings initiated under section 148 of the Act. Thereafter, challenging the notice issued by the respondent on 30.3.2021, the appellant filed a writ petition in W.P.No.17262 of 2021 seeking to quash the same on the ground that the re-opening of the assessment is a clear case of change of opinion on the part of the officer since the original assessment order under Section 143(3) was passed only after considering all the materials available on record.

4. By the order 18.08.2021, the learned Judge dismissed the Writ Petition holding that it is pre-mature as the re-assessment proceedings are yet to culminate in a speaking order on the aspect of jurisdiction and the reply of the appellant dated 12.07.2021 objecting to the reopening is yet to be considered by the respondent. Therefore, the learned Judge, while dismissing the writ petition, directed the respondent to hear the appellant

and pass orders on the objections dated 12.07.2021 within a period of four weeks. It was further observed that assessment, if any, would be taken up subject to conclusion on the aspect of jurisdiction.

5. Pursuant to the aforesaid order dated 18.08.2021 made in W.P.No.17262 of 2021, the respondent passed an order dated 15.12.2021, rejecting the objections filed by the appellant by observing that action under section 147 was validly initiated after obtaining necessary approval from the prescribed authority as provided in the Act; the reopening of the assessment under section 147 for the year 2014-15 was very much within the legal provisions envisaged by the said sections of the Income Tax Act, 1961; and the assessee's claim that the reopening was bad in law, does not have any ground. Aggrieved by the order of rejection dated 15.12.2021, the appellant filed W.P.No.186 of 2022, which was disposed of, by the learned Judge on 10.01.2022. For better appreciation, the relevant portion of the same is extracted below:

> '15. In this case the assessment was made pursuant to returns filed under Section 139 of the IT Act. The scrutiny assessment passed under section 143(3) of the Income Tax Act was based on the information in the returns. Whether there was a suppression of facts or not may be decided in the proceedings under section 148 of the IT Act. The impugned order has merely justified the reasons for reopening of the assessment. It cannot be said that the respondent has come to a definite conclusion as to whether indeed the case made out for recomputing the income based on the reasons given and the observations in the impugned order.
>
> 16. It is still open for the petitioner to give a proper explanation/reason as to why the assumption of jurisdiction under section 148 of the IT Act was erroneous both on the facts and on the law.
>
> 17. In view of the above, I am not inclined to interfere with the impugned order over ruling the objection of the petitioner. Liberty is however given to the petitioner to participate in the proceedings before the respondent by filing suitable reply for the respondent to pass appropriate reassessment order in accordance with law and on merits.

18. It is made clear that the observation in the impugned order is only for disposing the objection of the petitioner against reopening the completed assessment.

19. Ultimately, the issue will have to be decided on merits. It is for the petitioner to file appropriate reply/representation explaining the reason as to why the completed under section 143 (3) of the IT Act on 07.10.2016 deserves to be confirmed.

20. Under these circumstances, the writ petition filed by the petitioner is disposed. The respondent is directed to complete the proceedings within a period of three months from the date of receipt of a copy of this order."

6. Mr.R.Janakiraman, learned counsel appearing for the appellant submitted that adherence to the mandate of First Proviso to Section 147 is compulsory and the Department is not discharging its onus under this proviso which only points to lack of apparent jurisdiction. Though the same ground was raised in the earlier W.P.No.17262 of 2021 as well as in the present writ petition, the learned Judge did not consider the jurisdictional issue. On the other hand, it was observed in para 14 of the order dated 10.01.2022 that there are several disputed questions of facts, which cannot be decided in a summary proceedings under Article 226 of Constitution of India; and in para 16, it was further observed that it is still open for the appellant to give a proper explanation/reason as to why the assumption of jurisdiction under section 148 of the IT Act was erroneous both on the facts and on the law. The learned counsel further submitted that though the appellant has submitted their objections, the respondent, instead of appreciating the same in a proper perspective, rejected the same by order dated 15.12.2021, which is erroneous and contrary to law. In support of his contentions, the learned counsel placed reliance on the judgment of the Apex Court in Calcutta Discount Company Limited v. Income-Tax Officer, Companies District I, Calcutta and another reported in 1960 (11) TMI 8 - Supreme Court, wherein, it is held as follows;

"It must, therefore, be held that the Income tax Officer who issued the notices had not before him any non-disclosure of a material fact and so he could have no material before him for believing that there had been any material non-disclosure by reason of which an under-assessment had taken place.

We are, therefore, bound to hold that the conditions precedent to the exercise of jurisdiction under section 34 of the Income-tax Act did not exist and the Income-tax Officer had therefore no jurisdiction to issue the impugned notices under section 34 in respect of the years 1942-43, 1943-44 and 1944-45 after the expiry of four years."

By placing reliance on the above decision, it is submitted that in the case of appellant, the reasons recorded did not disclose any fresh materials at the hands of the assessing officer and there is obviously lack of jurisdiction under proviso to Section 147 of the Act. Thus, the learned counsel prayed for allowing the appeal by setting aside the orders passed by the learned Judge as well as the assessing officer.

7. Mr.A.P.Srinivas, learned Senior Panel Counsel submitted that the original assessment order was passed under section 143 (3) of the Act dated 07.10.2016, but later, on scrutiny of records, it was found that the amount debited by the appellant to the tune of Rs.3,71,782/- towards P&L account claiming prior period expenses was disallowable and it has to be brought to tax. Besides this, an amount of Rs.13,03,703/- towards interest expenditure paid to the relatives deposit loans was disallowable as it was found that no interest had been charged for the loan received from the firm by the partner. Therefore, the case was reopened under Section 147 of the Act. The learned counsel further submitted that re-assessment was sought to be made on certain issues based on the materials available at the hands of the assessing officer and hence, the learned Judge rightly directed the appellant to file its reply/representation explaining the reason as to why the completed assessment deserves to be confirmed, by the order impugned herein, which does not require any interference by this court.

8. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

9. Concededly, the assessment for the year 2014-15 in respect of the appellant firm was completed under section 143(3) on 07.10.2016. Subsequently, the respondent reopened the assessment under section 147 by issuing notice under section 148 of the Act, to which, the appellant filed its objections on 12.07.2021. Thereafter, as per the order of this court dated 18.08.2021 in WP.No.17262 of 2021 at the instance of the appellant, the respondent passed the order dated 15.12.2021 rejecting the said objections, on the premise that there are fresh tangible materials available at the hands of the assessing officer to reopen the assessment under section 147 of the Act.

The said order was put to challenge before the learned Judge in WP.No.186 of 2022, which was dismissed, by the order dated 10.01.2022 impugned herein.

10. We find no reason to interfere with the order of the learned Judge dated 10.01.2022 in W.P.No.186 of 2022 even prior to the passing of final order in the re-assessment proceedings. The learned Judge has pointed out in the order impugned herein that the respondent has only indicated the reasons and justifications for reopening the assessment and has not come to a definite conclusion as to whether any case has been made out for re-computing the income of the appellant. Therefore, the learned Judge has granted liberty to the appellant to file reply/representation as to why the completed assessment proceedings deserves to be confirmed. Such a conclusion arrived at by the learned Judge, in our opinion, does not require any interference. We also wish to observe that it is open to the appellant to raise all their contentions including the jurisdiction issue in the re-assessment proceedings carried on by the assessing officer.

11. With the above observation, this writ appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

msr/rsh

To

The Income Tax Officer,
Ward - 1(1),
Income Tax Office,
No.3, Gandhi Road,
Salem - 636 007.

+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.22673

W.A.NO.831 OF 2022

SSV(CO)
PBS/26/04/2022