IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2022

CORAM :

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

W.P.No.5162 of 2022
and W.M.P.Nos.5264 & 5265 of 2022

Mobius Knowledge Services Pvt. Ltd.,
Represented by its Director,
Mr.Karthik Karunakaran S/o.Mr.Marunakaran,
Aged 54 years,
No.16, A1, 1st Level,
Sriram, The Gateway,
Perungalathur, GST Road,
Chennai - 600 063. ... Petitioner

Vs.

Assistant Commissioner of Income Tax,
Corporate Circle 4(1),
121, Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034. ...Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records in DIN & Notice No:ITBA/AST/S/148/2021-22/1033870156(1) dated 30.06.2021 on the file of the respondent relating to A.Y. 2015-16 and quash the same.

For Petitioner : Mr.S.Srinirajani
For Respondent : Mr.D.Prabhu Mukunth Arunkumar
for Standing Counsel

ORDER

The prayer sought for herein is for a Writ of Certiorari, to quash the order of the respondent in DIN & Notice No:ITBA/AST/S/148/2021-22/1033870156(1) dated 30.06.2021 for the Assessment Year 2015-16

2. The impugned notice under Section 148 of the Income Tax Act, 1961(in short, 'the Act;) dated 30.06.2021 is under challenge in the present writ petition.

3. Assailing the said impugned notice, Ms.S.Sriniranjani, learned counsel appearing for the petitioner submits that, this notification of Section 147 followed by Section 148 notice

should not have been issued after 01.04.2021, in view of the amended provisions of Section 148A of the Act, as without exhausting the procedure contemplated under Section 148A, no notice under 148 for reopening the assessment especially after 01.04.2021, be issued.

4. Heard Mr.D.Prabhu Mukunth Arunkumar, learned Junior Standing Counsel appearing for the respondent, who would also submit that, if it is a proceedings under Section 147 of the Act for reopening, for which, 148 notice is issued, which is impugned herein and this has been issued on 30.06.2021 and that is well after a cut off date i.e., 01.04.2021, the date on which, the amended provision namely 148A of the Act has come into effect, the writ petition can be disposed of in view of the earlier decision of this Court made in Muktha Foundations Pvt. Ltd. Vs. The Income Tax Officer in W.P.No.3235 of 2022 dated 21.02.2022.

5. I have considered the said submission made by the learned counsel appearing for both sides and have perused the materials placed before this Court.

6. As has been rightly pointed out by the learned counsel appearing for the petitioner and has been fairly endorsed by the learned Standing Counsel appearing for the respondent/Revenue, that the issue raised in this writ petition has already been considered in the aforesaid decision, where I had an occasion to consider the issue and pass the following order:

> ''2. In order to initiate proceedings for opening of the assessment under Section 147 of the Income Tax Act, 1961 (in short -the Act-). Notice under Section 148 of the Act was issued dated 30.06.2021 to the assessee. The said notice is under challenge herein on the sole ground that, since the provision has got amended under Section 148A, which comes into effect from 01.04.2021, in which, the procedure contemplated under the amended provision has to be followed before issuing notice under Section 148 of the Act.
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> 3. However, the cases where if Section 148 notice were issued on or before 31.03.2021, the earlier unamended provision would apply. On that ground, since the impugned notice under Section 148 of the Act has been issued on 31.06.2021, admittedly, without following the procedure contemplated under the amended provision, it is vitiated and citing this

reason, Mr.G.Baskar, learned counsel appearing for the petitioner would submit that, the impugned notice would not stand in the legal scrutiny and it is liable to be set aside.

4. Heard Mrs.Hema Muralikrishnan, learned Senior Standing Counsel appearing for the respondent, who would submit that, in fact, the issue had been considered in a batch of writ petitions by the First Bench of this Court and it was decided on 04.02.2022 in the matter of Vellore Institute of Technology Vs. The Central Board of Direct Taxes and another in W.P.No.15019 of 2021 etc. batch, where, the Division Bench has passed the following order:

> ''19. In view of the ratio propounded by the Allahabad and Delhi High Courts on the subject, the reassessment notices under Section 148 of the Act of 1961 served on the petitioners on or after 1.4.2021 are set aside having been issued in reference to the unamended provisions and the Explanations are to be read as applicable to reassessment proceedings if initiated on or prior to 31.3.2021, but it would be with liberty to the assessing authorities to initiate reassessment proceedings in accordance with the provisions of the Act of 1961, as amended by the Finance Act, 2021, after making all the compliances as required by law, if limitation for it survives.''

5. In view of the said judgment, since this notice under Section 148 of the Act was issued / dated 30.06.2021 without following the amending provisions under Section 148A, therefore, it is covered under the said decision of the Division Bench, she contended.
''

6. Having considered the said submission made by the learned counsel appearing for both sides and having gone through the said judgment of the Division Bench of this Court referred to above, as admittedly the impugned notice under Section 148 of the Act was issued on 30.06.2021 or dated 30.06.2021 without following the procedure made through the amended provision of Section 148A, this Court has no hesitation to

hold that, the impugned notice shall not stand in the legal scrutiny, therefore, it is liable to be set aside. Accordingly, the impugned notice is set aside. However, it is open to the Revenue to issue fresh notice as per the amended provision, as has been indicated in the said Division Bench judgment dated 04.02.2022.

7. With the above observation, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.''

7. In view of the aforesaid judgment and by considering the factual matrix of this case, where notice under Section 148 of the Act has been issued on 30.06.2021 and it is not the case arising out of search under 132 of the Act, without exhausting the procedure contemplated under Section 148A of the Act, this Court has no hesitation to hold that the impugned notice shall not stand in the legal scrutiny, therefore this writ petition is disposed of with the following orders:

- That the impugned notice dated 30.06.2021 is set aside. However it is open to the Revenue if they are advised to do so, to initiate proceedings against the petitioner by adopting the procedure contemplated under Section 148A of the Act.

8. With these observations and directions, this Writ Petition is ordered accordingly. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

sp/mp
To

The Assistant Commissioner of Income Tax,
Corporate Circle 4(1),
121, Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034.

+1cc to M/s.Hema Muralikrishnan, Advocate, S.R.No.15446
+1cc to Mr.S.Srinirajani, Advocate, S.R.No.15176

W.P.No.5162 of 2022

GP(CO)
CT 21/04/2022