IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.03.2022

Coram:

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

Writ Appeal No. 1665 of 2021
and
C.M.P. No. 10486 of 2021

Revathi Equipment Ltd.,
Rep. by its Senior Manager - Finance & Accounts,
Mr.A.Hari Shankar Davey, S/o. T.K.Athmaram Davey,
331, Pollachi Road,
Malumachampatti Post,
Coimbatore - 641 050 ...Appellant/Petitioner

Versus

The Assistant Commissioner of Income Tax
Company Circle - I (1),
Race Course Road,
Coimbatore - 641 018 ...Respondent/Respondent

Writ Appeal filed under Clause 15 of Letters Patent praying to set aside the order passed by the learned Judge in W.P.No.29542 of 2010 dated 25.02.2021.

Prayer in W.P. No. 29542/2010:
Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the record in PAN : AABCR0624D/Co.Cir.I (1)/Cbe dated 15.12.2010 on the file of the respondent and quash the same.

For Appellant	:	Ms. Sri Lakshmi Valli for Mr. G. Baskar
For Respondent	:	Mr.A.P.Srinivas, Senior Standing Counsel

JUDGEMENT
(Judgement of the Court was delivered by R.MAHADEVAN, J.)

The present Writ Appeal is directed against the order dated 25.02.2021, passed by the learned Judge, dismissing the Writ Petition No. 29542 of 2010 filed by the appellant herein.

2. The appellant company is engaged in the business of manufacture and sale of Drilling Rigs and Spares. For the assessment year 2003-2004, return of income was submitted and the assessment was completed on 28.03.2005. Subsequently, on 01.02.2010, a notice was issued by the Assessing Officer under Section 148 of The Income Tax Act, 1961 (in short, the Act) by stating that he has reasons to believe that income chargeable to tax had escape assessment. In response, the appellant submitted their return of income on 24.02.2010 and sought the reasons for reopening the assessment. The reasons for reopening the assessment were also communicated to the appellant by a letter dated 05.03.2010. In response, the appellant submitted a letter dated 03.05.2010 objecting to the reopening of the assessment by stating that the reasons adduced for reopening the assessment are vague and not proper. In the objections submitted by the appellant, reliance was placed on the decision of this Court in the case of Fenner India Limited vs. Commissioner of Income Tax reported in 241 ITR 672. The objections so raised by the appellant were considered and rejected by the respondent by an order dated 15.12.2010. Assailing the order of rejection dated 15.12.2010 of the respondent, the appellant has filed the writ petition before the learned Judge.

3. The learned Judge dismissed the writ petition filed by the appellant with the following observations:-

> "29. In the light of the above observations, I am inclined to dismiss this Writ Petition. Though this Writ Petition is being dismissed, it is made clear that the respondent shall pass the re-assessment order in accordance with law uninfluenced by the observations contained herein as reasoning given in this order is only to come to a conclusion that there is no case made out for interference under Article 226 of the Constitution of India. Therefore, all the issues are left open for the petitioner to canvass its case before the respondent to pass a speaking order of re-assessment. While passing the re-assessment order, the respondent shall confine itself only to the reasons given for reopening the assessment vide communication dated 05.03.2010 for the subject Assessment Year 2003-2004.

30. Since the dispute pertains to the Assessment Year 2003-2004, the respondent is directed to pass such re-assessment order, within a period of three months from the date of receipt of a copy of this order. Needless to state, before such re-assessment order is passed, the petitioner shall be heard in accordance with law.

31. Accordingly, this Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed."

4. The learned counsel for the appellant submitted that in the return of income filed on 27.11.2003 for the assessment year 2003-2004, the appellant disclosed the payment of Rs.10 crores made to M/s. Atlas Copco India Limited towards non-compete fee and it was duly reflected in the profit and loss account. Subsequently, during the Assessment year 2005-2006, the appellant received Rs.15 crores from the said company towards cancellation of non-compete agreement, which was treated as income in the profit and loss account. The respondent also sent a questionnaire on 25.08.2004 with respect to the issue of non-compete fees paid to M/s. Atlas Copco and the appellant also furnished all the documentary evidence by way of a reply dated 25.01.2005. The assessing officer, after detailed examination, completed the assessment on 28.03.2005 by accepting the payment made as revenue expenditure. While so, after a period of four years, the respondent invoked Section 147 of the Act to reopen the concluded assessment and therefore, the reopening proceedings are without jurisdiction. When the appellant had truly and fully disclosed the material particulars, it is not open to the respondent to proceed to reopen the concluded assessment in the absence of any tangible material evidence. The learned Judge, in the impugned order has refused to interfere with the order passed by the respondent on the ground that it is not clear whether tax was indeed paid in the returns for the assessment year 2004-2005 besides there are disputed questions of facts involved in the present case. However, the learned Judge failed to take note of the fact that the Assessing Officer in the order of assessment for the year 2005-2006 has recorded that "During the year under assessment, a compensation of Rs.15 crore was received from M/s. Atlas Copco India Limited for cancellation of non-compete/non-solicitation agreements and termination of related rights. While so, the learned Judge ought to have allowed the writ petition by setting aside the order impugned in the writ petition and accordingly he prayed for allowing this appeal.

5. On the above contention, the learned Senior Standing Counsel for the respondent would contend that in the order dated 15.12.2010, which was impugned in the writ petition, the assessing officer has clearly stated that the non-disclosure of certain material facts fully and truly is a failure on the part of the appellant-assesee and it warrants re-assessment. In other words, it was clearly stated that the assessee has not disclosed the true intention behind clause 2.4 of the agreement he had entered into with his associate company at abroad. Therefore, it was stated that there was a false assertion or statement of material fact made by the appellant-assessee, which requires re-assessment. The learned Judge, on appreciation of the order dated 15.12.2010 of the respondent has refused to exercise his discretionary jurisdiction to interfere with the order dated 15.12.2010 and directed the respondent to pass final order of re-assessment after affording an opportunity of hearing to the appellant. The learned counsel therefore submitted that such an order passed by the learned Judge require no interference by this Court and prayed for dismissal of the writ appeal.

6. Heard the learned counsel on both sides and perused the materials placed before this Court.

7. It is apparent that the subject matter in issue is relating to the payment of Rs.15 crores received by the appellant from two companies as compensation for cancellation of agreements for non-compete / non-solicitation and termination of related rights. The said amount has been taxed during the assessment year 2005-2006, which has also been accepted by the respondent / assessing authority by assessment order dated 14.12.2007. Without considering the same, the respondent reopened the assessment, stating that the appellant failed to truly and fully disclose the material particulars at the time of passing the order of assessment. The learned Judge also, directed the respondent to pass re-assessment order, in accordance with law.

8. Having regard to the above stated position, this court, in order to provide an opportunity to the appellant and also in the interest of justice, is inclined to set aside the order of the learned Judge in the writ petition as well as the order of the respondent rejecting the objection filed by the appellant for reopening the assessment and are acco6rdingly set aside, in the following terms:

(i) The appellant is directed to submit all the material evidence along with additional objection meeting out the proposal raised by the respondent/Assessing Authority for reopening the assessment under Section 148 of the Act, before the respondent, within a period of two weeks from the date of receipt of a copy of this judgment.

(ii) On receipt of such material evidence and additional objection, the respondent is directed to consider the same and pass appropriate orders on merits and in accordance with law, within a period of two weeks thereafter.

9. This writ appeal is disposed of, with the aforesaid directions. No costs. Consequently, connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

mrr/rsh

To

The Assistant Commissioner of Income Tax,
Company Circle – I (1),
Race Course Road,
Coimbatore – 641 018.

+1 CC to Mr.A.P.Srinivas, Advocate sr 18487
+1 CC to Mr.G. Baskar, Advocate sr 18357.

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AK(CO)
SP(19/04/2022)