IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.04.2022

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.NO.7949 OF 2022
AND
W.M.P.NOS.7945 & 7946 OF 2022

M/s.Hemang Resources Limited,
Rep. by its Authorised Signatory
Komal J.Thakker,
Flat No.A2, 99, Harrington Court,
Harrington Road, Chetpet,
Chennai - 600 031. ... Petitioner

.Vs.

1. The Assistant Commissioner of Income Tax,
   Corporate Circle – 2(1), Chennai,
   Wanaparthy Block,
   No.121, Mahatma Gandhi Road,
   Nungambakkam, Chennai - 34.

2. National Faceless Assessment Centre, Delhi,
   Rep. by Additional/Joint/Deputy/Assistant Commissioner of Income Tax,
   Room No.401, 2nd Floor, E-Ramp,
   Jawaharlal Nehru Stadium,
   Delhi - 110 003. ... Respondents

PRAYER:-

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the impugned notice dated 31.03.2021 issued under Section 148 of the Income Tax Act, 1961 in PAN:AAACB6750D for assessment year 2016-17 having DIN and Notice No.ITBA/AST/S/148/2020-21/1032088172(1) issued by the first respondent and the consequential proceedings dated 21.03.2022 and 25.03.2022 having DIN and Letter No.ITBA/AST/F/17/2021-22/1041201384(1) and ITBA/AST/F/2021022/1041542664(1) respectively, issued by the second respondent and quash the same as illegal.

For Petitioner : Mr.K.Ravi

For Respondents : Mrs.Hema Muralikrishnan
Senior Standing Counsel

ORDER

The prayer sought for herein is for a Writ of Certiorari to call for the impugned notice dated 31.03.2021 issued under Section 148 of the Income Tax Act, 1961 in PAN:AAACB6750D for assessment year 2016-17 having DIN and Notice No.ITBA/AST/S/148/2020-21/1032088172(1) issued by the first respondent and the consequential proceedings dated 21.03.2022 and 25.03.2022 having DIN and Letter No.ITBA/AST/F/17/2021-22/1041201384(1) and ITBA/AST/F/2021022/1041542664(1) respectively, issued by the second respondent and quash the same as illegal.

2. The petitioner is the assessee under the respondents. In respect of the assessment year 2016-2017, in order to reopen the assessment under Section 147 of the Income Tax Act, 1961 [in short, 'the Act'], notice under Section 148 of the Act was issued on 31.03.2021.

3. Thereafter, after filing return, reasons were asked for by the assessee and the reasons had also been supplied by the Revenue to the assessee, who on receipt of the same, raised objections. Those objections having been considered, were rejected through the order dated 21.03.2022. Challenging this order, the present writ petition has been filed.

4. When the writ petition is taken up for admission, Ms.Hema Muralikrishnan, learned senior standing counsel for the Revenue, on instructions, would submit that in the meanwhile the authority i.e., the assessing authority has completed the assessment and passed the assessment order under Section 147 of the Act.

5. In view of the said development where assessment order itself had been passed, this Court is of the view that the petitioner can be relegated to the Appellate Authority to challenge the assessment order.

6. However, Mr.K.Ravi, learned counsel for the petitioner would point out that the very notice under Section 148 of the Act though was dated 31.03.2021, it has been sent only on 01.04.2021 at 06.52 hours. Therefore, it cannot be construed as a notice within the meaning of Section 148 as there has been an amendment under Section 148A of the Act which came into effect from 01.04.2021 at 00.00 hours on 01.04.2021. Therefore, this

notice itself is bad in law as per the Division Bench decision of this Court as well as various High Courts. Therefore, on that ground, the petitioner still insists that these orders which are impugned herein are liable to be set aside unmindful of the subsequent assessment order passed by the assessing authority.

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

8. Insofar as the plea now raised by the learned counsel for the petitioner that the notice under Section 148 of the Act though has been dated 31.03.2021, which has been sent only at 06.52 hours on 01.04.2021 can also be raised as a preliminary issue before the Appellate Authority while challenging the assessment order that has been passed now. If such a preliminary issue is raised, the same shall be decided by the Appellate Authority as a preliminary issue before going into the merits of the assessment order.

9. In that view of the matter, this Court is inclined to dispose of the writ petition with the following orders:

(i) That the petitioner is relegated to go before the Appellate Authority to challenge the assessment order which has subsequently been passed pursuant to the impugned orders herein. While filing an appeal, it is open to the petitioner to raise a point as a preliminary issue that the Section 148 notice itself has been issued on 01.04.2021 at 06.52 hours, therefore, it is not a valid 148 notice. The objection to be raised in this regard should be objectively considered based on which whether the assessment order under Section 147 of the Act is bad in law or not can also be decided.

(ii) If such a plea is raised by the petitioner before the Appellate Authority, the same shall be decided by the Appellate Authority as a preliminary issue before going into the merits of the assessment order.

(iii) In this context, if any stay petition is filed by the petitioner along with the appeal, the stay petition also can be decided along with the preliminary issue considering the merits of the case as indicated above and accordingly quietus can be given to the preliminary issue raised by the petitioner.

10. With these observations and directions, by relegating the petitioner to go before the Appellate Authority, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

mmi/sp

To

1. The Assistant Commissioner of Income Tax,
Corporate Circle – 2(1), Chennai,
Wanaparthy Block,
No.121, Mahatma Gandhi Road,
Nungambakkam, Chennai - 34.

2. The Additional/Joint/Deputy/Assistant
Commissioner of Income Tax,
National Faceless Assessment Centre
Room No.401, 2nd Floor, E-Ramp,
Jawaharlal Nehru Stadium,
Delhi - 110 003.

+1cc to Mr.K.Ravi, Advocate, S.R.No.22305
+1cc to Mrs.Hema Muralikrishnan, Advocate, S.R.No.22496

W.P.NO.7949 OF 2022

PL(CO)
PBS/24/06/2022