IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.03.2022

CORAM :

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

W.P.Nos.7907 & 7909 of 2022
and
W.M.P.Nos.7904, 7905, 7908 & 7910 of 2022

M/s.PayPal India Pvt. Ltd.,
Rep. by its authorized Signatory,
334, Block A, Futura IT Park,
Rajiv Gandhi Salai,
Sholinganallur,
Kanchipuram – 600 119. ... Petitioner in both WPs

Vs.

1. Additional/Joint/Deputy/Assistant Commissioner of Income Tax/Income Tax Officer,
National Faceless Assessment Centre,
New Delhi.

2. Assistant Commissioner of Income Tax,
Circle 1, LTU Wanaparthy Block,
No.121, Mahatma Gandhi Road,
Nungambakkam,
Chennai – 600 034. ... Respondents in both WPs

Prayer in W.P.No.7907 of 2022 : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records of the 2nd respondent pertaining to Reopening Notice for AY 2014-15 bearing DIN ITBA/AST/S/148/2020-21/1032107704(1) dated 31.03.2021 issued by the 2nd respondent herein, as well as the consequential order bearing DIN No.ITBA/AST/F/17/2021-22/1038502595(1) dated 06.01.2022 issued by the 1st respondent rejecting the petitioner's objections for reopening and quash the same.

Prayer in W.P.No.7909 of 2022 : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records of the 2nd respondent pertaining to Reopening Notice for AY 2016-17 bearing DIN ITBA/AST/S/148/2020-21/1037814033(1) dated 27.03.2021 issued by the 2nd respondent herein, as well as the consequential order bearing DIN No.ITBA/AST/F/17/2021-22/1037734799(1) dated

13.12.2021 issued by the 1st respondent rejecting the petitioner's objections for reopening and quash the same.

For Petitioner : Mr.Srinath Sridevan
(in both WPs)

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

COMMON ORDER

In these writs petitions in respect of the Assessment Years 2014-15 and 2016-17 with an intention to reopen the assessment under Section 147 of the Income Tax Act (in short, 'the Act'), notice under Section 148 of the Act was issued.

2. Subsequently, return was filed by the petitioner assessee and thereafter, reasons for reopening was asked for. The reasons for such reopening was given and pursuant to the said reasons, objections had been raised by the petitioner assessee.

3. After considering the objections, the Revenue passed orders rejecting the said objections raised by the assessee by orders dated 06.01.2022 and 13.12.2021. Challenging these proceedings, the present Writ Petitions have been filed.

4. It is brought to my notice by Mr.Srinath Sridevan, learned counsel appearing for the petitioner that, subsequently, a notice under Section 144A read with Section 142(1) was issued, pursuant to which, time limit was given on or before 23:59 hours on 28.03.2022 to reply.

5. But before making such reply, the website was closed as the petitioner could not have the access and on top of it on the same date i.e., 28.03.2022 by 23:26 hours i.e., well before the closing time for filing reply given to the petitioner, the Assessing Authority passed the order of assessment, which were the subject matter before this Court in W.P.Nos.7929 and 7932 of 2022.

6. When these assessment orders were under challenge having found these infirmity in favour of the assessee i.e., assessment orders for both assessment years were set aside and the matters were remitted back to the respondent Revenue for reconsideration with certain directions.

7. Therefore, the learned counsel would submit that, when

that being so, now the very reasoning stated for reopening under Section 147 itself is bad in law as by virtue of these reasons, the Assessing Authority cannot assume jurisdiction to reopen under Section 147 of the Act. Therefore, independently the challenge made in these writ petitions can be sustained, he contended.

8. Heard Mrs.Hema Muralikrishnan, learned Senior Standing Counsel appearing for the respondents, who would submit that, when the very same assessment orders passed under Section 147, which were subject matter in the earlier writ petitions were set aside and the matters were remitted back to the respondents with the direction of this Court to issue a fresh show cause notice by giving not less than one week time to reply and thereafter, considering the reply, the Assessing Authority were permitted to complete the assessment and pass orders of assessment, the present challenge made against the rejection of objections pursuant to the 148 notice will have no effect, therefore, these writ petitions in fact become infructuous. Therefore, they are liable to be dismissed, she contended.

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

10. As has been rightly pointed out by the learned Senior Standing Counsel appearing for the respondent Revenue, assessment orders were passed under Section 147 of the Act, prior to which, 148 notice was issued and the objections were raised, which were rejected through the impugned order. Challenging the assessment orders writ petitions were filed and the same were allowed by a separate order passed by this Court today, where, after setting aside those assessment orders, matters were remitted back to the Assessing Authority with a direction to issue fresh show cause notice by giving not less than one week time to the petitioner assessee to respond.

11. Therefore, the said directions issued by this Court shall be scrupulously followed and executed punctually by the respondent Assessing Authority. Therefore, at this juncture, the present challenge made against the 148 notice or the rejection order with regard to the objections raised by the petitioner for the proposed opening of assessment under Section 147 may not stand in the way.

12. In this regard, if any additional reasons have been given by the Assessing Authority, the same can also be objected to, for which, reply can be given with supporting documents and inputs by the petitioner assessee along with the reply to be given to the show cause notice which is going to be issued by

the respondent Assessing Authority pursuant to the orders passed in the other writ petitions referred to above. After considering all these reply or inputs to be supplied by the petitioner, the Assessing Authority can go ahead with the assessment process and complete the same by passing an order of assessment, if need arises. Therefore, the present challenge made against these orders in these writ petitions may not hold good for the purpose of legal scrutiny and decision.

13. In view of the aforestated reasons and discussions, both the writ petitions with the above observations are liable to be dismissed. Accordingly are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

sp/anu

To

1. The Additional/Joint/Deputy/Assistant Commissioner of Income Tax/Income Tax Officer,
National Faceless Assessment Centre,
New Delhi.

2. The Assistant Commissioner of Income Tax,
Circle 1, LTU Wanaparthy Block,
No.121, Mahatma Gandhi Road,
Nungambakkam,
Chennai - 600 034.

+2ccs to Mr.Srinath Sridevan, Advocate, S.R.Nos.22094, 22095

+1cc to M/s.Hema Muralikrishnan, Advocate, S.R.No.22003

W.P.Nos.7907 & 7909 of 2022

GMR(CO)
SU(26/04/2022)