IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No. 10297 of 2022
and
W.M.P.No.10008 & 10009 of 2022

Shri. S.Badrinath ...Petitioner

Vs.

1. The Principal Commissioner of Income Tax,
Chennai, Income Tax Buildings,
Ayakar Bhawan,
121, Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034.

2. The Income Tax Officer,
Non Corporate Ward No.19(4) CHE,
Ayakar Bhawan, 121, Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034.

3. The Joint Commissioner of Income Tax,
Faceless Assessment Centre,
Income Tax Department,
New Delhi. ...Respondents

Prayer: Writ Petition filed under Section 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, to call for the records pertaining to the impugned assessment order dated 30.03.2022 bearing ITBA/AST/S/147/2021-22/1042184614(1) issued by the 3rd respondent and quash the same.

For Petitioner : Mr.Hari Radhakrishnan

For Respondents : Mrs.Hema Muralikrishnan
Senior Standing Counsel

ORDER

The prayer sought for herein is for a writ of certiorari, to call for the records pertaining to the impugned assessment order dated 30.03.2022 bearing ITBA/AST/S/147/2021-22/1042184614(1) issued by the 3rd respondent and quash the same.

2. The petitioner is an assessee under the respondents. In respect of the Assessment Year 2016-17, in order to reopen the Assessment under Section 147 of the Income Tax Act, 1961 [in short, “the Act”], the Revenue issued notice under Section 148 of the Act on 24.03.2021. However, the said notice was served on the petitioner according to the petitioner on 09.07.2021. Thereafter on 23.07.2021, the petitioner asked the reasons for reopening and the said reasons asked for by the petitioner has never been divulged according to the learned counsel for the petitioner.

3. Instead, on 23.11.2021, a letter has been issued by the Revenue stating some reasons, which are not related to the petitioner, but relates to the other 3rd party/assessee. This has also been pointed out by the assessee, no further adjudication seems to have been made by the Revenue.

4. Subsequently, show cause notice along with draft Assessment Order was issued on 25.03.2022, this time also the petitioner has pointed out that, only in this show cause notice, the reasons have been stated, therefore, if at all this is the reasons for reopening, a chance to raising objections must be given as contemplated by the Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd -Vs- ITO [259 ITR 19 (SC]. However, despite the said reply given by the petitioner, the Revenue proceeded to pass the Assessment Order dated 30.03.2022, which is impugned herein.

5. Heard Mr.Hari Radhakrishnan, learned counsel appearing for the petitioner and Mrs.Hema Muralikrishnan, learned Senior Standing Counsel appearing for the respondents.

6. It is a settled procedure as per the decision in the case of GKN Driveshafts (India) Ltd(cited supra) by the Hon'ble Supreme Court, which is uniformly followed throughout the country that, whenever notice under Section 148 has been issued, followed by filing of the return by the assessee, where it is open to the assessee to ask for reasons, if the reasons asked for to reopening, the reasons must be given by the Revenue and if they do not reveal the reasons, that can be one of the grounds, to urge by the assessee to attack any consequential proceedings by citing the reasons for want of jurisdiction including the ultimate order of assessment.

7. Herein the case in hand, on 23.07.2021, reasons were asked for, for which, on 23.11.2021, a wrong letter has been issued to the petitioner pertaining to the other assessee and when this was pointed out by the petitioner, no rectification has subsequently been made and ultimately the show cause notice alone was issued on 25.03.2022, where the Revenue has revealed the reasons.

8. If at all the show cause notice dated 25.03.2022 is containing the reasons for reopening, then it should be

treated as the reasons revealed as per the procedure contemplated under the decision in the case of GKN Driveshafts (India) Ltd (cited supra), pursuant to which, a chance of raising objections by the petitioner/assessee has to be given by the Revenue, without which, now the impugned order of assessment since has been passed on 30.03.2021, this Court feels that the impugned order cannot stand in the legal scrutiny, accordingly it is liable to be interfered with.

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

- That the impugned order is set aside and the matter is remitted back to the respondent for reconsideration.
- While reconsidering the same, the show cause notice dated 25.03.2022 shall be treated as a communication revealing reasons for reopening under Section 147 of the Act and it is open to the assessee to raise objections, if they are advised to do so.
- Once such objections is raised within two weeks period from the date of receipt of a copy of this order that shall be considered and disposed of by the Revenue within a reasonable time.
- Thereafter, it is open to the Revenue to proceed further in accordance with law.

10. With these observations and directions, this writ petition is ordered accordingly. No costs. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

mp

To

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3. The Joint Commissioner of Income Tax,
Faceless Assessment Centre,
Income Tax Department,
New Delhi.

+1cc to M/s.Hema Muralikrishnan, Advocate SR. No. 27866
+2ccs to Mr.Hari Radhakrishnan, Advocate SR. No. 28091

W.P.No. 10297 of 2022

SSD (CO)
PR (24/05/2022)