IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No. 10158 of 2022
and
W.M.P.No.9848 of 2022

K.Ramalingam ...Petitioner

Vs.

1. National Faceless Assessment Centre,
   Delhi, 2nd Floor, Jawaharlal Nehru Street,
   Delhi – 110 003.

2. Income Tax Officer,
   Non-Corporate Ward (VI),
   No.16, BSNL Buildings,
   Greams Road, Chennai – 600 006. ... Respondents

Prayer: Writ Petition filed under Section 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, call for the records of the first respondent relating to the Assessment Order dated 29.03.2022 passed for the assessment year 2014-15 and bearing DIN No.ITBA/AST/S/147/2021-22/1041977933(1) along with notice of demand dated 29.03.2022 bearing DIN and Notice No.ITBA/AST/S/156/2021-22/1041978063(1) and notice for penalty dated 29.03.2022 bearing No. DIN. ITBA/PNL/S/27(1) (c)/2021-2022/1041978277(1) and quash the same.

For Petitioner : Mr.R.Chellamuthu

For Respondents: Mrs.Hema Muralikrishnan
Senior Standing Counsel

ORDER

The prayer sought for herein is for a writ of certiorari, calling for the records of the first respondent relating to the Assessment Order dated 29.03.2022 passed for the assessment year 2014-15 and bearing DIN No.ITBA/AST/S/147/2021-22/1041977933(1) and notice for penalty dated 29.03.2022 bearing No.DIN.ITBA/PNL/S/27(1) (c)/2021-2022/1041978277(1) and quash the same.

2. It relates to the Assessment Year 2014-15, the petitioner is an assessee under the respondent. In order to reopen the assessment under Section 147 of the Income Tax Act, 1961 [in short, "the Act"], the Revenue had issued notice under Section 148 of the Act on 31.03.2021, pursuant to which, on 29.04.2021, the petitioner had filed return and thereafter on 22.07.2021, the petitioner had asked the respondent/Revenue as to the reasons to believe for issuing Section 148 notice.

3. Thereafter, notice under Section 142(1) was issued on 12.11.2021 and notice under Section 143(2) of the Act was issued on 23.01.2022 and again notice under Section 142(1) of the Act was issued on 26.02.2022. Those notices were replied by the petitioner on 01.03.2022.

4. However, no reasons specifically have been revealed by the Revenue, pursuant to the asking of the petitioner about the reasons to believe, on their request dated 22.07.2021.

5. Thereafter, on 26.03.2022, final show cause notice was issued. However, no draft Assessment Order has been annexed therein.

6. In the said final show cause notice, time was given only upto 28.03.2022 at 23:59 hours, initially there was no reason given for reopening pursuant to Section 148 notice and subsequently along with show cause notice dated 26.03.2022, no draft assessment order has been given. For these reasons, the petitioner, that too, within the shortest possible time of 48 hours, could not file any reply and in the meanwhile, on 29.03.2022, the Assessment Order has been passed, which is challenged in this writ petition.

7. The aforestated reasons have been urged by Mr.R.Chellamuthu, learned counsel appearing for the petitioner/assessee. Therefore, for the said reasons, he would submit that the impugned assessment order is vitiated. Hence, it is liable to be interfered with.

8. Per contra, Mrs.Hema Muralikrishnan, learned Senior Standing Counsel appearing for the Revenue/Respondents has contended that the reasons though were sought for, as per the procedure being adopted, now the Revenue has given such reasons along with notice dated 23.01.2022 issued under Section 143(2) of the Act by way of annexure. Since the very notice under Section 143(2) itself was replied by the petitioner/assessee, it can very well be construed that the reasons given by the Revenue for reopening having been considered and accepted by the

petitioner/assessee as reply to the said notices. Therefore, at this juncture, once again the plea of giving reasons separately cannot be raised.

9. The learned Senior Standing Counsel would further submit that when show cause notice was issued on 26.03.2022 normally the draft Assessment Order would be issued, but in this case, if it is the case of the petitioner that the draft Assessment Order has not been issued that may not be fatal to the proceedings, which concluded through the impugned Assessment Order dated 29.03.2022. Therefore, on that reason also, the impugned order cannot be assailed.

10. 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.

11. First of all, when reasons were sought for specifically by the communication of the petitioner dated 22.07.2021, the reasons should have been revealed by the Revenue as that was the procedure contemplated in the case of GKN Driveshafts (India) Ltd -Vs- ITO [259 ITR 19 (SC]. Along with Section 143(2) notice, the reasons stated as annexure cannot be construed as reasons specifically given by the Revenue within the meaning of the law declared by the Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd (cited supra). Therefore, on that reason alone, the further proceedings, which culminated in the impugned Assessment Order, in the considered opinion of this Court, is vitiated.

12. That apart, along with show cause notice dated 26.03.2022, there has been no draft assessment order annexed, therefore, it should not be expected that the assessee should respond by way of reply, that too, in a shortest time of 48 hours. Therefore, that reason also can be taken as one of the reasons to vitiate the impugned order, as that would amount to violation of principles of natural justice.

13. Hence, for all these reasons stated above, this Court is inclined to dispose of this writ petition with the following orders:

i. The impugned Assessment Order is set aside and the matter is remitted back to the respondent for reconsideration.

ii. While doing reconsideration process, the reasons have to be specifically revealed for reopening the Assessment under Section 147 of the Act to the petitioner/assessee. Therefore, that point also can very well be raised once again by the petitioner along with the reply to be submitted by the petitioner, which the petitioner/assessee can meet it only after getting the draft Assessment Order along with the show cause notice dated 26.03.2022. Therefore, for the said purpose, a fresh show cause notice along with a draft Assessment Order should be issued by the Revenue and on receipt of the same, the needful reply action can be undertaken by the petitioner/assessee.

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

Sd/-
Assistant Registrar(CS-II)

//True copy//

Sub Assistant Registrar

mp

To

1. National Faceless Assessment Centre,
Delhi, 2nd Floor, Jawaharlal Nehru Street,
Delhi – 110 003.

2. Income Tax Officer,
Non-Corporate Ward (VI),
No.16, BSNL Buildings,
Greams Road, Chennai – 600 006.

+1cc to Mrs.Hema Muralikrishnan, Advocate SR.No.27865

+1cc to Mr.T.Ayyasamy, Advocate SR.No.27819

W.P.No. 10158 of 2022

SKM(CO)
GMY(08/07/2022)