IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.10389 of 2022
and W.M.P.Nos.10109 and 10110 of 2022

M/s.Kumar Builders
A Partnership registered under the
Indian Partnership Act, 1932
(PAN AAAFK3121C), represented by
its Partner Indira Gandhi, 142-D/18
MF Road, 1st Cross, Ranipet – 632 406. ...Petitioner

-Vs-

1. Income Tax Officer
   Ward II Vellore
   No.2, Barracks Cross Street
   Officer's Line, Vellore-632001.

2. Deputy Commissioner of Income Tax
   Central Circle 3(3), Chennai. ...Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the records of the 1st Respondent contained in its Notice under Section 148 of the Income Tax Act 1961 bearing DIN and Notice No. ITBA / AST / S / 148 / 2020 - 21 / 1031820241 (1) dated 27.03.2021 served on 01.04.2021 for the assessment year 2013 - 14 the consequent Assessment order bearing DIN and Notice No. ITBA / AST / S /147 / 2020 - 21 / 1042165447 (1) dated 30.03.2022 for the assessment year 2013 - 14 and the corresponding Notice of Demand dated 30.03.2022 issued by the 2nd Respondent quash the same as arbitrary unjust and illegal.

For Petitioner : Mr.Salai Varun

For Respondents : Mr.A.N.R.Jayapratap
Junior Standing Counsel

ORDER

The petitioner is an assessee under the respondents. In order to reopen the assessment under Section 147 of the of the Income Tax Act (In short 'the Act') , a notice under Section 148 of the Act was issued by the Revenue on 27.03.2021.

2. As per the procedure contemplated by the Hon'ble Supreme Court in GKN Driveshafts (India) Ltd -Vs- ITO (259 ITR 19 (SC) case, return should have been filed by the assessee and thereafter only the assessee can ask for reasons for reopening of the assessment. In this case, even though it is claimed by the petitioner that the petitioner assessee has asked the reasons, the fact remains that he has not filed the return.

3. Be that as it may. Subsequently, when the assessment proceedings were pending before the erstwhile assessing authority, the jurisdiction since got changed, it has been transferred from Vellore to Chennai and therefore, after the file has been transferred to Chennai, once again a notice under Section 142(1) of the Act was issued on 25.03.2022, whereby time was given to the petitioner to respond upto 28.03.2022 at 4.30 P.M. The said notice, according to the petitioner since has been sent by the Revenue through registered post, was received and acknowledged by the petitioner only on 06.04.2022, whereas the assessment order, pursuant to the said notice, has been passed by the Revenue on 30.03.2022 itself and therefore, challenging the same the present writ petition has been filed.

4. Heard Mr.Salai Varun, learned counsel appearing for the petitioner, who after having reiterated the aforesaid facts, would also canvass the point that, though reasons were sought for reopening the assessment pursuant to Section 148 notice, such reasons since have not been given, the proceedings initiated under Section 148 of the Act itself is vitiated.

5. Mr.A.N.R.Jayapratap, learned Junior Standing Counsel appearing on behalf of the respondent Revenue has pointed out that, if that is the procedure to be adopted on the basis of the law declared by the Hon'ble Supreme Court in GKN Driveshafts (India) Ltd -Vs- ITO (259 ITR 19 (SC) case, the benefit arising out of the said decision cannot be singled out without complying with the conditions imposed therein, whereby the assessee should have filed the return. But, admittedly in this case no return has been filed by the assessee. Hence, the learned Standing Counsel contends that, the very Section 148 notice cannot be questioned.

6. Insofar as the Section 142(1) notice is concerned, since it has been received by the petitioner only on 06.04.2022 before which if the Assessment Order is passed, from that stage alone the Revenue can be directed to continue the assessment process and pass final orders and not prior to that.

7. I have considered the submissions made by the learned counsel appearing on either side and have perused the materials placed on record.

8. As has been rightly pointed out by the learned Standing Counsel, the petitioner has not complied with the condition of filing return as contemplated in the judgment of the Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd -Vs- ITO (259 ITR 19 (SC). Only reasons were asked for and such reasons have not been given. However, while issuing the earlier Section 142(1) notice, by way of annexure those reasons were indicated, pursuant to which there was a change in the jurisdiction. Since the petitioner has not filed the return, the assessment has been proceeded and finalized, which culminated in the impugned order dated 30.03.2022. At this juncture, the said ground raised by the petitioner challenging the Section 148 notice may not hold good as such that ground of challenge is rejected.

9. Insofar as the plea raised by the petitioner that, though Section 142(1) notice was issued on 25.03.2022 giving time upto 28.03.2022 the said notice since has been sent through registered post, which the petitioner received only on 06.04.2022 and before which since the assessment order has been passed on 30.03.2022, this Court feels that it is a violation of the principles of natural justice.

10. Considering the above aspects, this Court is inclined to dispose of this writ petition with the following order.

- That the impugned order dated 30.03.2022 is set aside and the matter is remitted back to the respondents for reconsideration.

- While reconsidering the same, the notice dated 25.03.2022 issued under Section 142(1) of the Act shall be treated as a fresh notice and it is open to the petitioner to respond to the same within two weeks from the date of receipt of a copy of this order.

- After getting such reply / input from the petitioner assessee, it is open to the respondents to proceed further and pass final assessment orders.

10. With the above directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

KST

To

1. The Income Tax Officer
   Ward II Vellore
   No.2, Barracks Cross Street
   Officer's Line, Vellore-632001.

2. The Deputy Commissioner of Income Tax
   Central Circle 3(3), Chennai.

+1cc to Mr.A.P.Srinivas, Advocate SR. No. 29073

W.P.No. 10389 of 2022

PMK (CO)
PR (30/06/2022)