



W.P.No.29867 of 2019 &
WMP.No.29781 of 2019

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29.09.2022

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THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.No.29867 of 2019 &
WMP.No.29781 of 2019

M/s.RKR.Gold P. Ltd.,
No.10, Srinivasa Raghavan Street,
R.S.Puram,
Coimbatore – 641 002.
PAN AADCR4414M
Rep. by its Managing Director S.V.Srinivasan

... Petitioner

Vs

- 1.The Assistant Commissioner of Income Tax,
Corporate Circle 2,
Income Tax Department,
67 A, Race Course Road,
Coimbatore – 641 018.
- 2.The Deputy Commissioner of Income Tax,
Corporate Circle 2,
Income Tax Department,
67 A, Race Course Road,
Coimbatore – 641 018.
- 3.The Principal Commissioner of Income Tax,
Coimbatore 1,
Income Tax Department,



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67 A, Race Course Road,
Coimbatore – 641 018.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent to quash the impugned notice dated 29.03.2018 in PAN-AADCR4414M relating to the Assessment Year 2011-2012 along with the order dated 09.09.2019 disposing off the objections for reopening and direct the 2nd respondent consequently to drop the proceedings of re-assessment initiated within the scope of Section 147 of the Income Tax Act, 1961.

(Prayer amended as per order dated 25.10.2019 made in WMP.No.30772 of 2019 in W.P.No.29867 of 2019 by KRCBJ)

For Petitioner : Mr.A.S.Sriraman

For Respondent : Mr.A.P.Srinivas,
Senior Standing Counsel

ORDER

Heard Mr.A.S.Sriraman, learned counsel for the petitioner and Mr.A.P.Srinivas, learned Senior Standing Counsel for the respondents.

2.The challenge is to proceedings for re-assessment under the provisions of the Income Tax Act, 1961 (in short 'Act') for the assessment year A.Y.2011-2012. The petitioner had filed the return of income, in time, accompanied by



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the required annexures. The return was taken up for scrutiny and notice under Section 143(2) was issued on 31.07.2012.

3. Inter alia, the assessing authority calls for the attendance of the petitioner to his office to finalise the assessment. Parallely and separately, a notice had been issued by the Income Tax Officer in the Intelligence and Criminal Investigation wing of the Income Tax Department (ITO(I&CI)), on 05.10.2012.

4. The (ITO(I&CI)) calls upon the petitioner to furnish information under Section 133(6) of the Act including bank statements relating to cash deposits in excess of Rs.2 lakhs. On 15.10.2012, the petitioner responds enclosing copies of statements in ICICI, Dhanlaxmi, Axis and other banks wherein the petitioner holds deposits.

5. On 26.11.2012, the petitioner files before the assessing officer, copies of bank statements in Axis, Dhanalaxmi, Yes and Standard Chartered banks. Conspicuous by its absence, is the statement relating to ICICI bank that was produced before the ITO(ICI).

6. It is an admitted position that the statement of the account in ICICI Bank was not enclosed and there is nothing either in the communication dated



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26.11.2012 filed before the assessing officer or any other record/communication that could lead to a conclusion that this statement had been enclosed.

7. There was a further exchange of notices and responses between the petitioner and the respondent and reply of the petitioner dated 24.10.2013 also refers to '*Details of Bank accounts of the company and its directors*' without any reference to ICICI Bank. The order of assessment has come to be passed by the assessing officer under Section 143(3) of the Act on 28.01.2014, based upon the materials available.

8. While this is so, the petitioner was in receipt of a notice under Section 148 on 29.03.2018 beyond a period of four years from the end of the relevant assessment year. The Department is thus to satisfy the additional condition set out under the proviso to Section 147 to the effect that the petitioner had made an incomplete and untrue disclosure of relevant facts at the initial stage.

9. The petitioner responded to the notice and sought the reasons for re-assessment that read as follows:

“3. The assessee is a closely held domestic company, which is engaged in the business of manufacture of gold jewelry. The assessee has filed the return of income for the A.Y. 2011-12 on



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30.09.2011 admitting income of Rs.1,46,70,020/- and assessment u/s 143(3) was completed on 28.01.2014 assessing total income at Rs.1,51,11,077/- by disallowing an amount of Rs.4,41,055/- under various heads.

4.The assessee M/s RKR Gold Pvt Ltd maintained account No.034205500165 with Coimbatore-RS Puram branch which was opened on 27.01.2011 and linked accounts under PAN No AADCR4414M. The account was triggered for large value of cash transactions. It is observed that, gets mainly in the form of cash deposits from base branch & through RTGS following by debit through RTGS. Frequent high value cash deposit has been seen in the account. For e.g., from 01.02.2011 to 31.03.2011, account got credited by Rs.42.29 Crore through cash deposits and debited by Rs.48.32 Crore through RTGS. Thus based on the transaction pattern, activity in the account and value of transaction, it is appearing as suspicious.

5.In this case the assessee has filed return of income and the assessment was completed u/s 143(3). However cash deposits seen as above in the account has not been verified during assessment u/s 143(3). Also on verification of assessment records, it is found that this aspect was not scrutinized by the Assessing Officer. Therefore, the Assessing Officer has reason to believe income escaped and there is requirement for re-opening proceedings u/s 147 for the reasons recorded above.

6.The Assessing Officer has carefully considered the assessment records containing the submissions made by the assessee in response to various notices issued during the assessment proceedings and has noted that the assessee has not fully and truly disclosed the facts necessary for its assessment for the year under consideration thereby necessitating reopening u/s 147 of the Act.”



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10. Learned counsel for the petitioner would stress on the contents of the paragraphs 4 & 5 to point out that the only reason justifying the reassessment is the failure of the officer to verify the deposits in the ICICI Bank, R.S. Puram Branch at the first instance, and there is no fault has been attributed to the petitioner in that regard.

11. However, this submission is seen to be erroneous in light of the statement of the officer at paragraph 6, wherein he clearly states that the assessing authority had verified the assessment records containing the submissions made by the assessee in response to notices issued during assessment, and has come to the conclusion that the assessee has not fully and truly disclosed the necessary facts.

12. What has transpired is that, post finalisation of the assessment, the Department had received information regarding suspicious bank transactions between the period 01.02.2011 to 31.02.2011, wherein an amount of Rs.42.29 crores had been deposited in cash and immediately debited through RTGS. The impugned proceedings for re-assessment have come to be initiated based upon the information received regarding the aforesaid modus operandi, and to verify the same.



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13. I am, in this writ petition, to examine the veracity or otherwise of the assumption of jurisdiction by the respondent in light of the proviso to Section 147 that reads as follows:

147. Income escaping assessment -

.....

Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment years, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts† necessary for his assessment, for that assessment year:

14. I have rendered a finding at paragraph 6 supra to the effect that the communications/responses of the petitioner during the original assessment do not reveal the existence of the bank account at ICICI, R.S.Puram Branch. In this regard, mere reference to the aforesaid bank account in the communication addressed to the ITO (ICI) will be of no aid to the petitioner.

15. The criminal investigation wing is separate and distinct from the assessment wing and disclosure made before one wing will not exonerate the



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petitioner from the requirement of making a 'full and true disclosure' before the assessing officer in assessment.

16. In fact, the apparent difference in the communications addressed to the assessing authority on the one hand and the ITO (ICI) on the other, would itself illustrate the difference in the disclosures made before the two authorities. Records have been summoned and produced by the standing counsel, that confirm the averment in counter to the effect that there was no disclosure of the account in ICICI bank R S Puram at the time of assessment.

17. In the absence of a full and true disclosure by the petitioner at the first instance, the assumption of jurisdiction by the assessing authority beyond the period of four years is not barred by limitation, and cannot be faulted. The impugned order is confirmed and the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes

Speaking Order



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DR.ANITA SUMANTH, J.

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