IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	06.12.2021
Pronounced On	22.04.2022

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.22541 of 2021
and
W.M.P.No.23766 of 2021

(Through Video Conferencing)

M/s.Harita Housing Construction Limited,
29, Jayalakshmi Estates, Nungambakkam,
Chennai 600 034. Represented by its Director,
Shri. V N Venkatanathan
... Petitioner

Vs.

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

2. The Income Tax Officer, Corporate Ward -2(3), 121, Mahatma Gandhi Road, Chennai - 600 034. ... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, calling for the records of the petitioner on the file of the first respondent and quash the Impugned Assessment Order in ITBA /AST / S / 147 / 2021-2022/ 1036054436(1) dated 30.09.2021 in PAN:AACCH5542F for the Assessment Year 2013-2014 passed by the first respondent.

For Petitioner : Mr.R.Vijayaraghavan
for Subbaraya Aiyar Padmanathan

For Respondents: Mrs.Hema Muralikrishnan
Senior Standing Counsel

ORDER

The petitioner has challenged the Impugned Order dated 30.09.2021 passed for the Assessment Year 2013 to 2014 pursuant to notice issued under Section 148 of the Income Tax Act, 1961 on 30.05.2019.

2. It is the case of the petitioner that the assessment was originally completed under Section 143(3) of the Income Tax Act, 1961 for the Assessment Year 2013 to 2014 on 29.02.2016 and thereafter the proceeding under Section 148 of the Income Tax Act, 1968 was initiated in terms of notice dated 30.05.2019 beyond the period of four years but within the period of six years.

3. The learned counsel for the petitioner submits that the petitioner had purchased a land from the original owners namely M.V.Subramaniam and N.Ponnuswamy by virtue of a sale deed dated 09.04.2012 for total sale consideration of 3.90 crores (Rs.3,90,13,597/-) and that the consideration for the aforesaid amount was paid by Group company namely TVS Motor Services Limited and that the entire amount was 3.90 crores was shown in the books of account to TVS Motor Services Limited, as the amount due from the petitioner.

4. The learned counsel further submits that TVS Motor Services Limited by a letter dated 05.02.2016 confirmed that as per their books of account, the petitioner was owed a Debit balance of Rs.26,15,86,900/- as on 31.03.2013 together with interest.

5. He further submits that again by another confirmation letter dated 28.03.2018 the said company confirmed that the TVS Finance and Services Limited entered into an agreement with M/s.TVS Motor Services Limited on 02.04.2012 and sold the land to the petitioner and another three companies for a consideration of Rs.25.82 crores each and that the amount was received by the petitioner from the TVS Motor Services Limited.

6. The learned counsel further submits that the impugned Assessment Order has been passed by the first respondent contrary to the decision of this Court in GKN Drivershafts (India) Ltd vs. Income Tax Officer and Ors. (2002) 70 CCH 1264 SCC.

7. The learned counsel further submits that after notice was issued to the petitioner under Section 148 of the Act, two show cause notices were issued to the petitioner and in response to the 2nd show cause notice dated 25.09.2021, the petitioner has specifically raised the issue regarding reopening of the

assessment vide reply dated 27.09.2021. It is submitted that without giving any reasons and without disposing the objection of the petitioner for reopening of the assessment impugned order dated 30.09.2020 has been passed and is therefore liable to be quashed.

8. It is further submitted that the entire proceedings is based on the change of opinion and therefore contrary to the following decisions of this Court and that of the Hon'ble Supreme Court:-

i. Foramer Vs. Commissioner of Income Tax and another, (2001) 247 ITR 0436.
ii. Commissioner of Income Tax and another Vs. Foramer France, (2003) 264 ITR 0566.
iii. Commissioner of Income Tax Vs. Kelvinator of India Ltd., (2010) 320 ITR 0561.
iv. Fenner (India) Limited Vs. Deputy Commissioner of Income Tax, (2000) 241 ITR 0672.
v. City Union Bank Limited Vs. Assistant Commissioner of Income Tax and another (2020) 425 ITR 0475 (Mad)
vi. MBI Kits International Vs. Income Tax Officer (2018) 408 ITR 0001 (Mad)
vii. Tanmac India Vs. Deputy Commissioner of Income Tax, (2016) 97 CCH 0189 ChenHC
viii. Commissioner of Income Tax Vs. Elgi Ultra Industries Ltd., (2008) 296 ITR 0573.
ix. Assistant Commissioner of Income Tax and another Vs. Hotel Blue Moon, (2010) 321 ITR 0362.
x. GKN Drivershafts (India) Ltd Vs. Income Tax Officer and Ors., (2002) 70 CCH 1264 (SC)
xi. Shri.Khimraj Sakariya Vs. The Assistant Commissioner of Income Tax, Business Circle-5, Chennai 600 006, Tax Case (Appeal) No.65 of 2017.
xii. Mr.Gurusamy Vs. Assistant Commissioner of Income Tax, (2016) 97 CCH 65 (Mad)
xiii. Commissioner of Income Tax Vs. D.P.Sandu Bros, Chembur (P) Ltd., (2005) 273 ITR 1 (SC)
xiv. Cadell Weaving Mill Co., (P) Ltd Vs. Commissioner of Income Tax, (2001) 249 ITR 265(Bom)
xv. Commissioner of Income Tax Vs. Mahindra and Mahindra Ltd., (2018) 404 ITR 1 (SC)

xvi. PVP Ventures Limited Vs. Assistant Commissioner of Income Tax, (2015) 94 CCH 0147 ChenHC
xvii. Sabharwal Properties Industries Private Ltd., and others Vs. Income Tax Officer and others, (2016) 382 ITR 0457 (Delhi)
xviii. Commissioner of Income Tax Vs. Arvind Remedies Limited, (2015) 378 ITR 0547 (Mad)
xix. Commissioner of Income Tax and another Vs. United Racing and Blood Stock Breeders (P) Ltd., (2016) 130 DTR 0344 (Kar)
xx. M.Gurusamy Vs. The Assistant Commissioner of Income Tax, (2016) 97 CCH 0065 ChenHC
xxi. The Commissioner of Income Tax Vs. D.P. Sandu Bros. Chembur Private Ltd., (2005) 273 ITR 0001.
xxii. Cadel Weaving Mill Company Private Ltd., Vs. The Commissioner of Income Tax, (2001) 249 ITR 0265.
xxiii. The Commissioner of Income Tax Vs. Mahindra Ltd, (2018) 404 ITR 0001 (SC).

9. Opposing the prayer for interfering with the impugned order, the learned Senior Standing Counsel for the respondents submits that the petitioner neither asked for any reasons for reopening of the assessment nor raised any objections at the appropriate time so to pass a speaking order in terms of this Court in GKN DriveShafts (India) Ltd., vs. Income Tax Officer and Ors. (2002) 70 CCH 1264 (SC).

10. The learned Senior Standing Counsel further submits that the petitioner has an alternate remedy by way of an appeal and therefore there is no merits in the present writ petition.

11. By way of rejoinder, the learned counsel for the petitioner has drawn attention to a communication dated 15.11.2021 from the office of the respondent after the impugned order was passed where the reasons were given for reopening the assessment wherein it has been held as follows:-

> " As per the information received from the ITO Corporate Ward - 3 (2) that during the Financial Year 2012-13 relevant to the Assessment Year 2013-14, the assessee company had purchased 10 Hectares of land at Panvel (Maharashtra) from M/s.TVS Motor Services Private Limited (PAN : AADCT1470D) for a consideration of Rs.25.82 corers.
>
> Whereas it is seen that the assessee company had filed Return of Income for the Assessment

Year 2013-14 admitting " NIL" income and the assessment was completed with NIL Income.

Whereas the source for the consideration amount to the extent of Rs.25.82 crores has to be verified.

In the circumstances there exist reasons to believe that income to the extent of Rs.25.82 crores has escaped from assessment and hence it is hereby proposed that the assessment year 2016-17 may be reopened in order to verify the inconsistencies and being the income escaping assessment to tax".

12. The learned counsel for the petitioner submits that the reasons given in the said notice also does not justify the reopening of the assessment and therefore prays for quashing the impugned order.

13. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Standing counsel for the respondents. I have also perused the materials and notices issued under Section 148 of the Income Tax Act, 1961 and the Impugned Assessment Order passed by the respondents.

14. The reasons for reopening the assessment was also furnished to the petitioner on 15.11.2021. Relevant portion reads as under:

As per the information received from the ITO Corporate Ward-3(2) that during the Financial Year 2012 to 2013 relevant to the Assessment Year 2013 to 2014, the assessee company had purchased 10 Hectares of Land at PANVEL (Maharastra) from M/s. TVS Motor Services Private Limited (PAN:AADCT1470D) for a consideration of Rs.25.82 crores.

Whereas it is seen that the assessee company had filed Return of Income for the Assessment Year 2013 to 2014 admitting "NIL" income and the assessment was completed with NIL Income.

Whereas the source for the consideration amount to the extent of Rs.25.82 crores has to be verified.

In the circumstances there exist reasons to believe that income to the extent of Rs.25.82 crores has escaped from assessment and hence it is hereby proposed that the assessment year 2016-2017 may be reopened in order to verify the inconsistencies and being the income escaping assessment to tax.

15. The petitioner has participated in the proceedings pursuant to a notice issued under Section 148 of the Income Tax Act, 1961 knowing fully well the reasons why the notice was issued for reopening of the assessment. The petitioner in their representation/reply dated 29.10.2019 has traced out the entire history and the circumstances under which the land which originally belonged to Piramal Finance Services Limited (PFSL) was transferred to Harita Finance Limited (HFL) which later named as TVS Finance and Services Limited and that a sale agreement was signed and the possession of the land was handed over to the said company.

16. The representation/reply also states that thereafter the land was capitalized in the books of accounts of the TVS Finance and Services Limited (formerly Harita Finance Limited) and that the land was valued at Rs.102.50 Crores. Based on the valuation on 27.03.2009 the TVS Finance and Services Limited (formerly Harita Finance Limited (HFL) entered into an agreement with TVS Credit Services Limited to transfer the above land with the certain condition. By 30.03.2020, it was stated that the difference between the sale consideration (Rs.102.50 Crores) and the outstanding loan amount against the lands were settled (Rs.14.70 Crores) and was offered to tax under the head capital gains by TVS Finance and Services Limited (TVSFC) in the Assessment Year 2009 to 2010.

17. The petitioner has further stated that though the land was transferred to TVS credit Services Limited, the same was transferred to the petitioner’s vendor namely TVS Motor Services Limited at cost by TVS Finance Services Limited with TVS Credit Service Limited being confirming a party by an agreement to sale dated 20.01.2010.

18. Thereafter, the TVS Motor Services Limited sold ten hectares of land to the following four companies and retained 1.065 hectares.

Name of the Company	No.of.Hectares	Amount
Sundaram Auto Components Ltd.('SACL')	10	25.82
TVS Greentech Power Ltd. ('TVSGP')	10	25.82

Name of the Company	No.of.Hectares	Amount
Harita Housing Construction Private Limited ('HHCP')	10	25.82
TVS Credit Services Limited	10	25.82
Total Sale Value	40	103.28
TVS Motor Services Limited (Land retained)	1.065	2.75
Total	41.065	106.03

19. Thus, it cannot be stated that the petitioner was not aware of the reasons for reopening of the assessment. The petitioner has replied to the proceedings initiated under Section 148 of the Income Tax Act, 1961. The petitioner has not asked for a speaking order. After the objections, the petitioner was overruled by the respondents vide Impugned Assessment Order, the petitioner has now come forward with the present case to make it seems as if decision of the Hon'ble Supreme Court in the case of GKN Drive Shafts (India) Limited Vs. Income Tax Officer, reported in 259 ITR 19, has not been followed.

20. The merits of the case as to whether the income had escaped assessment or not can be now determined only in an appellate proceedings against the Impugned Assessment Orders passed under Section 147 read with Section 144B of the Income Tax Act, 1961.

21. Having given up the right to ask for a speaking order, the petitioner cannot now turn around and question the Impugned Order by stating that it has been passed over-looking the safeguard prescribed as the Hon'ble Supreme Court in the case of GKN Drive Shafts (India) Limited Vs. Income Tax Officer, reported in 259 ITR 19. Further, case also does not warrant a speaking order in terms of the aforesaid decision of the Court.

22. I do not find any merits in the present writ petition. Therefore, this writ petition is liable to be dismissed and accordingly dismissed. However, liberty is given to the petitioner to file a statutory appeal before the Appellate Commissinoner under Section 246A of the Income Tax Act, 1961 within a period of three months from the date of receipt of a copy of this order. If such an appeal is filed within the aforesaid period, the petitioner's appeal shall be entertained and disposed in merits and in accordance with law.

23. This Writ Petition stands dismissed with the above observations. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

True Copy//

Sub Assistant Registrar

rgm/kkd

To

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

2. The Income Tax Officer,
   Corporate Ward -2(3),
   121, Mahatma Gandhi Road,
   Chennai – 600 034.

+1cc to Subbaraya Aiyar, Advocate, S.R.No.27742
+1cc to Mrs.Hema Muralikrishnan, Advocate, S.R.No.27871

W.P.No22541 of 2021
and
W.M.P.No.23766 of 2021

JPL[co]
NSK/01/06/2022