IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2022

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.NO.28305 OF 2021
AND
W.M.P.NOS.29890 & 29892 OF 2021

(THROUGH VIDEO CONFERENCING)

Pentamedia Graphics Limited,
Represented by its Director,
Mr.T.S.Srinivasan,
S/o Late T.K.Seshadri,
T2, III Floor, Nutech Plaza,
73, Arcot Road, Kodambakkam,
Chennai - 600 024. ... Petitioner

Vs

The Assistant Commissioner of Income Tax,
Non Corporate Circle 10 (1),
Room No.620, Sixth Floor, Wanaparthy Block,
No.121, Mahatma Gandhi Road,
Chennai - 600 034. ... Respondent

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records in DIN & Letter No:ITBA/COM/F/17/2021-2022/1036663655(1) dated 29.10.2021 on the file of the Respondent relating to the Assessment Year 2004-2005 and quash the same.

For Petitioner : Mr.G.Baskar

For Respondent : Mrs.Hema Muralikrishnan
Senior Standing Counsel

ORDER

The petitioner has challenged the impugned communication dated 29.10.2021 bearing reference DIN & Letter No.ITBA/COM/F/17/2021-2022/1036663655(1) for the Assessment Year 2004-2005, over ruling the objection of the petitioner against the reopening of the assessment.

2. This is the second round of litigation in this Court. As far as the Assessment Year 2004-2005 is conferred, earlier an Assessment Order came to be passed in contravention of the direction of the Hon'ble Supreme Court in G.K.N.Driveshafts (India) Ltd. Vs. Income Tax Officer and Others, (2003) 259 ITR 19 (SC) and therefore the Re-assessment Order dated 28.12.2011 was challenged by way of writ petition in W.P.No.2520 of 2012.

3. After hearing the petitioner, the learned Single Judge of this Court was pleased to allow this writ petition by an order dated 30.07.2021 by directing the respondent to pass a speaking order pursuant to which, the impugned order has been passed.

4. It is the specific case of the petitioner that similar proceedings for reopening the assessment for the subsequent Assessment Years namely 2005-2006 and 2006-2007 also have been initiated which are the subject matter of W.P.Nos.34985 and 34986 of 2012.

5. The learned counsel for the petitioner submits that as far as the Assessment Year 2004-2005 is concerned, earlier an Assessment Order came to be passed for reopening the assessment on 22.11.2006 wherein, the respondent had disallowed the expenses incurred by the petitioner towards web casting charges for a sum of Rs.4,00,00,000/- and restricted the expenditure only for a sum of Rs.4,48,04,840/-.

6. The learned counsel for the petitioner further submits that further an appeal has been filed before the Appellate Commissioner, the disallowance of expenditure towards web casting charges for the balance sum of Rs.2,00,00,000/- was allowed by CIT (Appeals) by an order dated 11.01.2008 in ITA No.655/2006-2007 pursuant to which, a revised assessment was issued by the respondent on 12.09.2008 after giving effect to the aforesaid order. The respondent issued a notice under Section 148 of the Income Tax Act, 1961 on 21.03.2011 which has culminated in the impugned proceeding which was challenged before this Court.

7. The learned counsel for the petitioner further submits that the reasons given for reopening of the assessment as follows:-

> "The assessee has not deducted the TDS u/s 195 on the amount paid to foreign companies towards the multi media charges"

8. The learned counsel for the petitioner submitted that the petitioner has given adequate reasons as to why the assessment cannot be reopened particularly in the light of the fact that earlier order came to be passed on 08.12.2006.

9. The learned counsel for the petitioner further submits that the reopening of the assessment is contrary to law and settled by the Hon'ble Supreme Court and arises on account of change of opinion is impermissible.

10. The learned counsel for the petitioner further submits that there is no suppression on the part of the petitioner to justify reopening of the assessment under Section 148 for the purpose of Sections 143 and 147 of the Income Tax Act, 1961.

11. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondent.

12. It is the case where a notice for reopening of assessment was issued on 19.10.2011. The petitioner has replied to the same which culminated in Assessment Order dated 28.12.2011. The said order was passed in contravention of the directions of the Hon'ble Supreme Court inasmuch as no speaking order was passed in terms of the decision of the Hon'ble Supreme Court in G.K.N.Driveshafts case (referred to supra). It was therefore set aside and the case was remitted back to pass a speaking order.

13. The respondent has now passed the impugned order/communication over ruling the objection of the petitioner. By the impugned order, the respondent has merely concluded the reasons why the assessment has been reopened. The fact that the assessment has been reopened itself does not mean that the re-assessment has been completed.

14. It is open for the petitioner to participate in the proceedings and make appropriate submissions before the respondent by convincing the respondent to the effect that there is no case made out for revising the assessment completed earlier.

15. If an adverse order is passed by the respondent, the petitioner always has an alternate remedy before the Commissioner of Income Tax (Appeals) as was exercised by the petitioner in the earlier round.

16. Therefore, I do not find any merits in this writ petition. This writ petition is dismissed with the above observations. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

arb/rgm

To

1 The Assistant Commissioner of Income Tax,
Non Corporate Circle 10 (1),
Room No.620, Sixth Floor, Wanaparthy Block,
No.121, Mahatma Gandhi Road,
Chennai - 600 034.

2 The Commissioner of Income Tax (Appeals)
Chennai.

+1cc to Mr.G.Baskar, Advocate, S.R.No.444
+1cc to M/s.Hema Muralikrishnan, Advocate, S.R.No.475

W.P.No.28305 of 2021
and
W.M.P.Nos.29890 & 29892 of 2021

SRA(CO)
PM/27/01/2022