BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 03.02.2022
CORAM
THE HON'BLE MR. JUSTICE M.SUNDAR
W.P(MD)No.2053 of 2022
and
W.M.P.(MD)No.1765 of 2022

Kausalya Maruthachalam ... Petitioner

-Vs-

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

2.The Deputy Commissioner of Income Tax Circle-1,
No.44, Williams Road, Cantonment, Tiruchirappalli,
Tamil Nadu 620 001. ... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari, calling for the records of the 1st respondent with regard to the impugned assessment order passed against the Petitioner dated 20.12.2021 for the Assessment Year 2008-2009 bearing DIN in Order No.ITBA/AST/S/147/2021-22/1037961473 (1) under Section 147 read with Section 144B of the Income Tax Act, and quash the same as unreasonable, illegal, wholly without jurisdiction.

For Petitioner : Mr.Nithyaesh Natraj
For Respondents : Mr.N.Dilipkumar,
Senior Standing Counsel.

O R D E R

Mr.Nithyaesh Natraj, learned counsel for the writ petitioner (assessee) and Mr.N.Dilipkumar, learned Senior Standing Counsel for Income Tax (Revenue Counsel) who has accepted notice on behalf of both the respondents are before this virtual Court. Owing to the short point that is being canvassed in the captioned matter, main writ petition was taken up with the consent of both sides.

2. In the light of short point that is being canvassed factual matrix in a nutshell containing the facts that are imperative for appreciating this order will suffice. Such factual matrix is that the captioned matter pertains to an assessment made under the 'Income Tax Act, 1961' (hereinafter 'IT Act' for the sake of convenience and clarity) qua 'Assessment Year 2008-2009' (hereinafter 'said AY' for the sake of convenience and clarity);

that there was search proceedings under Section 153C of IT Act; that an assessment order came to be made on 24.12.2009 under Section 143 (3) of IT Act; that this was followed by further proceedings which culminated in another assessment order dated 23.12.2011 made under Section 143(3) read with Section 147 of IT Act; that thereafter the writ petitioner was visited with a notice dated 31.03.2015 being a notice under Section 148 of IT Act for re-assessment qua said AY; that this notice was assailed by the writ petitioner in this Court in a writ petition vide W.P.(MD)No.5110 of 2016 and this writ petition along with WMPs therein came to be disposed of by a Hon'ble Single Judge of this Court on 18.03.2021 (date wrongly mentioned as 21.10.2021 in synopsis); that this order was carried in appeal by the writ petitioner-assessee by way of an intra Court appeal to a Hon'ble Division Bench of this Court; that Hon'ble Division Bench of this Court Vide W.A.No.1876 of 2021 dismissed the appeal; that a conjoint reading of the order of Hon'ble Single Judge and that of the Hon'ble Division Bench brings to light that it was a consent order before the Hon'ble Single Bench and the directive of the Hon'ble Single Judge is to give an opportunity of personal hearing to the petitioner and thereafter pass orders in accordance with law; that thereafter there was a notice dated 12.11.2021 under Section 142(1) of IT Act; that in response to this notice, writ petitioner sent 'objections dated 23.11.2021' (hereinafter 'said objections' for the sake of convenience and clarity); that thereafter a show cause notice (SCN) dated 16.12.2021 together with a draft assessment order came to be issued and this has led to an assessment order 'dated 20.12.2021 bearing reference DIN in Order No.ITBA/AST/S/147/2021-22/ 1037961473(1)' (hereinafter 'impugned order' for the sake of convenience and clarity).

3. In the hearing before this Court today, notwithstanding very many averments made in the writ affidavit and notwithstanding several grounds raised in the writ affidavit, the matter was argued on one point and that one point is GKN principle ***[GKN Driveshafts (India) Limited Vs. Income Tax Officer and others]*** has not been followed post aforementioned orders of this Court. To be noted, GKN principle, is a reference to an order of Hon'ble Supreme Court in Civil Appeal No.7731 of 2002 etc. being order dated 25.11.2002 reported in ***(2003) 1 SCC 72***. For clarity and specificity this Court makes it clear that the GKN Driveshafts principle has been succinctly set out in paragraph 5 and the same reads as follows:

> *'5.We see no justifiable reason to interfere with the order under challenge. However, we clarify that when a notice under Section 148 of the Income tax Act is issued, the proper course of action for the noticee is to file return and if he so desires, to seek reasons for issuing notices. The assessing officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the noticee is entitled to file objections to issuance of notice and the assessing officer is bound*

to dispose of the same by passing a speaking order. In the instant case, as the reasons have been disclosed in these proceedings, the assessing officer has to dispose of the objections, if filed, by passing a speaking Order before proceeding with the assessment in respect of the abovesaid five assessment years.'

4. Having set out the trajectory and the lone point that is being argued in the hearing it is necessary to set out the bone of contention between the assessee and the Department in a nutshell. The bone of contention is fairly simple and that is whether profit on sale of what according to the writ petitioner is agricultural land are not liable to capital gains tax under Section 45 of IT Act. The issue is nothing more nothing less.

5. This Court now reverts to the GKN Driveshafts principle. From the narrative thus far which also captures the trajectory the matter has taken, it will be clear that after the orders of Hon'ble Single Judge and the order of the Hon'ble Division Bench of this Court, the Department had issued a notice dated 12.11.2021 under Section 142(1) of IT Act and the writ petitioner has sent objections dated 23.11.2021, which is being referred to as said objections. If GKN Driveshafts principle is to be followed, the Assessing Officer should have considered this objections and made an order which has now come to stay in litigation parlance as 'speaking order'.

6. Learned Revenue Counsel attempted to say that the aforementioned SCN dated 16.12.2021 contains a draft assessment order and therefore that by itself will serve as a speaking order. This Court is unable to accept this argument as a careful reading of paragraph 5 GKN Driveshafts case law which has been extracted and reproduced supra will make it clear that it is a mechanism out side of the IT Act which has been put in place in assessments of this nature more particularly in re-assessment of this nature and therefore, the objections have to necessarily be dealt with and an order made before the draft assessment is served on the writ petitioner. Therefore the argument of learned Revenue Counsel that the draft assessment itself will serve as speaking order though ingenious and attractive at first blush does not find favour with this Court.

7. As already alluded to supra, the entire matter was argued on one point and in the light of the discussion and dispositive reasoning that one point now can be given a quietus by freezing the matter qua the objections of writ petitioner/assessee i.e., said objections dated 23.11.2021 and calling upon the Assessing Officer i.e, Department to proceed from this objections stage in accordance with GKN Driveshafts principle and complete the re-assessment as expeditiously as the business of the first respondent i.e., Assessing Officer (AO) would permit. Before this Court does that it

is deemed appropriate to extract and reproduce the orders of Hon'ble Single Judge and the order of the Hon'ble Division Bench in writ petitioner's earlier challenge to 31.03.2015 notice under Section 148 of IT Act. The reason is the order of the Single Judge has been placed before this Court as part of the case file but the intra Court appeal has not been mentioned and the order of the Division Bench has not been placed before this Court. It was brought to the notice of this Court by the learned Revenue Counsel. For convenience and ease of reference, both the orders i.e., order of the Hon'ble Singe Judge and the order of the Hon'ble Division Bench are reproduced infra one after other.

8. Order of the Hon'ble Single Judge dated 18.03.2021 is as follows:

> *'Heard the learned counsel on either side.*
>
> *2. The petitioner questions the impugned notice dated 31.03.2015 and the consequential communication dated 18.02.2016 issued by the second respondent on the grounds set out in the affidavit filed in support of this writ petition.*
>
> *3. This Court indicated that since the petitioner has come at the notice stage itself, this Court may not be inclined to entertain this writ petition. Thereupon, the petitioner's counsel submitted that all the contentions of the petitioner may be left open. The petitioner has already given reply before the second respondent.*
>
> *4. The second respondent shall give an opportunity of personal hearing to the petitioner and thereafter, pass orders in accordance with law. I make it clear that all the contentions of the petitioner are left open and I have not gone into the merits of the matter.*
>
> *5. This writ petition stands disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.'*

9. Order of the Hon'ble Division Bench dated 05.10.2021 is as follows:

> *Challenging the order passed in W.P(MD)No.5110 of 2016, dated 18.03.2021, the writ petitioner has filed the above Writ Appeal.*
>
> *2.The appellant filed the Writ Petition to issue a Writ of Certiorari, to call for the records pertaining to the impugned second notice dated 31.03.2015 and the consequential communication dated 18.02.2016 issued by the second respondent and to quash the same.*
>
> *3.On a perusal of the order impugned in the Writ Appeal, it could be seen that the same is a consent order passed by the learned Single Judge.*

4.When the Writ Petition came up for hearing before the learned Single Judge, the petitioner's counsel submitted that all the contentions of the petitioner may be left open and that the petitioner has already given her reply to the second respondent for the notices issued to her. The learned Single Judge directed the second respondent to give an opportunity of personal hearing to the appellant and thereafter pass orders in accordance with law. The learned Single Judge also made it clear that all the contentions of the writ petitioner are left open.

5.Since the appellant/writ petitioner has filed the Writ Appeal as against the consent order passed by the learned Single Judge, the same cannot be entertained by this Court.

6.In such view of the matter, the Writ Appeal is liable to be dismissed and accordingly, the same is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.'

10. The conclusion is, all proceedings post writ petitioner's /assessee's objections dated 23.11.2021 are set aside solely on the ground that GKN Driveshafts principle has not been strictly adhered to. The first respondent Assessing Officer shall proceed from this 23.11.2021 objection stage, pass a speaking order, complete the re-assessment as expeditiously as his business would permit and in any event within 12 weeks from today i.e., on or before 28.04.2022.

11. Captioned writ petition is disposed of in above manner. Consequently captioned WMP is disposed of as closed. There shall be no order as to costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Vsm

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

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

2.The Deputy Commissioner of Income Tax Circle-1,
No.44, Williams Road, Cantonment, Tiruchirappalli,
Tamil Nadu 620 001.

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-4363[F] dated 04/02/2022)

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