IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2023

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.26089 of 2021 and W.M.P. Nos. 27543, 27545 and 27546 of 2021 and 23911 of 2023

ASE Structure Design Private Limited,
Represented by its Director, Bharat Manilal Pujara.
Previously at:
377/272, Anna Salai, Teynampet,Chennai 600 018.
Presently at:
No.6 & 7, 5th Street, Dr.Radhakrishna Salai,
Mylapore, Chennai 600 004. ..Petitioner

Vs.

The Deputy Commissioner of Income Tax,
Corporate Circle 1(1), MG Road, Nungambakkam,
Chennai - 600 034. ..Respondent

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 Respondent contained in its notice bearing No.ITBA/AST/S/148/2019-20/1017072894(1), dated 29.07.2019, issued by the Respondent under Section 148 of the Income Tax Act, 1961, for PAN:AAECA3065E, for the assessment year 2016-17, and all proceedings in furtherance thereof, including the assessment order in DIN and Order No. ITBA/AST/S/147/2021-22/1036072758(1), dated 30.09.2021 passed by the Respondent under Section 147 of the Income Tax Act, 1961 for PAN: AAECA3065E, for the assessment year 2016-17, and to quash the same as arbitrary, illegal and unjust and to consequently forbear the Respondent or its superiors, subordinates, agents etc. from re-assessing the Petitioner's income for the assessment year 2016-17 under Section 147 of the Income Tax Act, 1961.

For Petitioner : Mr.Suhrith Parthasarathy
For Respondent : Mr.B.Ramana Kumar
Standing Counsel

ORDER

The impugned order of assessment under Section 147 of the Income Tax Act, 1961 (hereinafter referred to as “Act”) is challenged on the limited ground that the same has been made on 30.09.2021 which is the last date for exercising power of reassessment without supplying the reasons pursuant to notice under Section 148 of the Act despite request by the petitioner to furnish reasons for reopening which has been held by the Hon'ble Supreme Court to be mandatory, thereby vitiating, the impugned order of assessment.

2. The petitioner is in the business of preparation of engineering drawings for overseas Engineering Construction Companies. For the assessment year 2016-17, the petitioner filed its original return of income on 29.11.2016 admitting a total income of Rs.1,49,37,270/-. The petitioner's case was selected for limited scrutiny to verify the “large deduction of claim under Section 35(1)" of the Act. Accordingly, a notice dated 06.07.2017 was issued to the petitioner under Section 143(2) of the Act. After scrutiny of various documents, the respondent proceeded to disallow the deduction under Section 35(1) of the Act to the extent of Rs.35,00,000/- and an assessment order under Section 143(3) of the Act, came to be passed, determining the total income of the petitioner as Rs.1,84,37,270/-.

3. Whileso, the petitioner received a notice under Section 148 of the Act, dated 29.07.2019 from the Respondent, seeking to reopen the assessment for the AY 2016-17 under Section 147 of the Act. In response to the above notice issued under Section 148 of the Act, the petitioner vide letter dated 15.11.2019, informed the Respondent that the petitioner had filed its return of income on 16.10.2019 and requested the Respondent to provide the reasons for reopening the assessment, at the earliest. This letter was filed with the Respondent on 29.11.2019. However, even two years, thereafter the Respondent had not communicated the reasons for reopening the assessment under Section 147 of the Act for AY 2016-17. The petitioner submits that in view thereof it was under the bonafide belief that the reassessment proceedings had been dropped by the Respondent.

4. The petitioner also received a show cause notice dated 28.09.2021 as to why donations made to M/s.Rural Development Society, Hyderabad cannot be added back to its total income and required the petitioner to appear for hearing on the following day i.e., 29.09.2021 at 12.00 p.m. The above show cause notice was generated and sent to the petitioner only at 8.16 p.m. on 28.09.2021. The petitioner was also served with the notice in sub-section(1) of Section 142 of the Act on the very same day i.e., 28.09.2021 calling upon the

petitioner to furnish documents / details set out in the Annexure in the said notice. The above notice was apparently sent at 8.12 p.m. on 28.09.2021 while calling upon the petitioners to furnish the above details / information / documents at 11.00 a.m. on the following day i.e., 29.09.2021.

5. Now coming back to the non-furnishing of reasons for reassessment, it is relevant to note that the Respondent had not furnished reasons for reopening till date. The petitioner would thus submit that it was completely unaware as to reason for reassessment for AY 2016-17. Further, the time granted for responding to the notice under Section 142(1) and the show cause notice was grossly insufficient and thus in breach of basic principle of natural justice. While the petitioner was gathering documents to respond to the aforementioned notices, the Respondent had passed the impugned order under Section 147 of the Act on 30.09.2021.

6. The present writ petition is filed challenging the order dated 30.09.2021 on the premise that the proceedings stands vitiated inasmuch as it has been completed in gross disregard to the decision of the Hon'ble Supreme Court in the case of *GKN Driveshafts Ltd. vs. Income Tax Officer* reported in *259 ITR 19 (SC)* wherein the assessing authorities were directed to furnish the

reasons for reassessment if sought for by the assessee. It is submitted that the failure on the part of the Respondent to furnish the reasons for reopening despite a specific request made by the petitioner renders the entire proceedings illegal and bad. In this regard, it may be relevant to refer to the judgment of the Division Bench of this Court in *T.C.A.No.273 of 2020* dated 16.12.2020 wherein while examining as to whether failure to furnish the reasons for reopening on a request made would vitiate the assessment proceedings, it was held that it was mandatory for the Assessing Authority to furnish reasons and if the Assessing Authority fails to do so, the re-assessment proceedings is liable to be set aside. Further, after referring to the judgment of the Hon'ble Supreme Court in the case of *GKN Driveshafts (India) Ltd. vs. ITO [(2003) 259 ITR 19 (SC)],* it was held that non-furnishing of reasons would cause serious prejudice and would vitiate the proceedings, resultantly the impugned proceeding was quashed. The relevant portion of the judgment is extracted hereunder:

> *"16. Thus, considering the factual position in the instant case and having noted that the assessee, at the first instance, sought for furnishing the reasons for reopening, would clearly show that non-furnishing of reasons has put him to prejudice. As noted above, the Revenue could not produce any evidence to show that the reasons recorded were provided to the assessee in spite of opportunity having been granted by the Tribunal. Thus, we find that the Tribunal was right in allowing the assessee's appeal and quashing the reassessment proceedings "*

7. It may also be relevant to refer the following judgments wherein orders

made in disregard to the procedure laid down in the case of *GKN Driveshaft* for reassessment was held to be fatal to its validity. The following extracts are relevant in this regard:

i) Bayer Material Science Pvt. Ltd. v. Deputy Commissioner of Income-Tax, 2016 SCC OnLine Bom 15952:

> "9. This passing of the draft assessment order without having disposed of the objections is in defiance of the Supreme Court's decision in *GKN Driveshafts (India) Ltd.*(supra). Thus, the draft assessment order dated March 30, 2015 is not sustainable being without jurisdiction. This for the reason that it has been passed without disposing of the objections filed by the petitioner to the reasons recorded in support of their impugned notice."

ii) KSS Petron Pvt Ltd v Assistant Commissioner of Income Tax, Income Tax Appeal No. 224 of 2014:

> "8.We note that once the impugned order finds the Assessment Order is without jurisdiction as the law laid down by the Apex Court in *GKN Driveshafts* (supra) has not been followed, then there is no reason to restore the issue to the Assessing Officer to pass a further/fresh order. If this is permitted, it would give a licence to the Assessing Officer to pass orders on reopening notice, without jurisdiction (without compliance of the law in accordance with the procedure), yet the only consequence, would be that in appeal, it would be restored to the Assessing Officer for fresh adjudication after following the due procedure. This would lead to unnecessary harassment of the Assessee by reviving stale/ old matters"

8. Applying the above judgment to the facts of the present case, I am of the view that the impugned order under Section 147 of the Act is made contrary to and in gross disregard/ non-compliance with the procedure laid down for reassessment by the Hon'ble Supreme Court inasmuch as the assessment order is passed without furnishing the reason for reassessment despite a specific

request. The impugned order stands vitiated and is thus set aside.

9. In view of the above, the impugned order is quashed. The writ petition stands allowed. It is open to the respondent to reassess subject to limitation and in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

08.11.2023

Speaking (or) Non Speaking Order
Index:Yes/No
spp/shk

To:
The Deputy Commissioner of Income Tax,
Corporate Circle 1(1),
MG Road, Nungambakkam,
Chennai - 600 034.

MOHAMMED SHAFFIQ, J.

spp

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