IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2023
Coram

The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.32189 of 2022
and
W.M.P.No.31613 of 2022

M/s.Nippon Paint (India) Pvt. Ltd.,
rep. by its Director S.Mahesh Anand
K-8 (1) Phase II SIPCOT Industrial Park,
Mambakkam Village, Sunguvarchatiram,
Kancheepuram – 602 106. ...Petitioner

Vs.

1. The Assistant Commissioner of Income Tax,
   Corporate Circle- 4 (1)
   121, Nungambakkam High Road, Chennai.

2. The Assessment Unit,
   National Faceless Assessment Centre, Delhi.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for records of the impugned order under Section 148A (d) in DIN and Order

No.ITBA/COM/F/17/2022-23/1046544256(1) dated 31.10.2022 passed by the first respondent and the impugned Noitice No.1 in PAN : AACCN2352F dated 21.03.2022 in DIN ITBA/AST/F/148A(SCN)/2021-22/1041140359(1) issued under Section 148 A(b) of the Income Tax Act, 1961 issued by the first respondent and the impugned notice No.2 issued under Section 148 of the Act by the first respondent dated 31.10.2022 in DIN & Letter No.ITBA/COM/F/17/2022-23/1046555925(1) for the assessment year 2018-19.

For Petitioner : M/s.N.V.Lakshmi and N.V.Balaji

For Respondents : Mr.V.Mahalingam
Senior Standing Counsel

ORDER

The challenge in this Writ Petition is to the show cause notice dated 21.03.2022 and the consequential orders passed by the first respondent under Section 148 (A) d and 148 respectively both dated 31.10.2022.

2. The case of the petitioner in brief is as follows:-

i) The petitioner is a domestic Company and is engaged in the business of manufacturing and trading of Decorative Paints, Industrial Paints and refinish paints. The petitioner filed its return of income under Section 139(1) of the Income Tax Act (hereinafter, referrd to as 'the Act'). The petitioner's case was selected for scrutiny and assessment under Section 143(3) was completed on 05.04.2021 accepting the income.

ii) Thereafter, the first respondent issued a notice under Section 154 of the Act dated 22.09.2021, stating that the petitioner does not have balance in unabsorbed depreciation for adjustment in computation of taxable income under Section 115 JB of the Act for AY 2018-19, hence, Rs.27,71,07,081/- was required to be disallowed and brought to tax. The petitioner vide response dated 24.09.2021, brought to the attention of the first respondent that as per clause (iii) of Explanation 1 to sub-section (1) of Section 115B of the Act, the unabsorbed depreciation loss of Rs.27,97,24,208/- was considered for adjustment and that, the petitioner has availed the adjustment correctly as per the provisions of the Act, and hence, disallowance of 27,71,07,081/- as purported by the first respondent does not arise. Thereafter, no order under Section 154 was passed or served on the petitioner pursuant to the response filed on 24.09.2021. Therefore, the petitioner was under an impression that proceedings under Section 154 might have been decided in favour of the petitioner.

iii) However, on 21.03.2022, the first respondent issued a notice under Section 148 (b) of the Act, requiring the petitioner to show cause as to why, notice under Section 148 of the Act should not be issued for the AY 2018-19. The petitioner filed response on 21.03.2022, reiterating that the unabsorbed depreciation sought to be reassessed was already adjudicated during the course of original assessment proceeding and rectification proceeding under Section 154 of the Act and sought further time of 15 days for filing effective reply. However, the first respondent without considering the same, passed the impugned order under Section 148 A (d) of the Act dated 31.10.2022 and issued impugned notice No.2 under Section 148 of the Act dated 31.10.2022. Challenging the said orders dated 31.10.2022, the present Writ Petition is filed.

3. Mr.N.V.Balaji, learned counsel appearing for the petitioner assailed the impugned orders by contending that the notice issued under Section 148 of the Act is barred by limitation, since, in terms of the said Section, the respondent-Department ought to have passed the order on or before 30.09.2022 but in the present case, the impugned order has been passed on 31.10.2022, which is much beyond the time-limit provided under the Act. It is further contended by the learned counsel that the impugned orders are also not sustainable since notice under Section 148 is based on an audit objection, and the same is not final and only upon final audit objection, proceedings can be initiated under Section 148 of the Act. The learned counsel also contended that, since there is no escapement of income, the jurisdiction assumed by the first respondent is bad and consequently, reopening proceedings have to be dropped.

3.1 The learned counsel further contended that initially, on 21.03.2022, a show cause notice was issued by the first respondent under Section 148 A (b) of the Act granting only three days' time to file reply, and since 7 clear days time was not provided, the petitioner has challenged the said show cause notice dated 21.03.2022 as well as the consequential orders passed under Section 148 A (d) and 148 dated 30.03.2022 and 31.03.2022 respectively by filing W.P.No.9918 of 2022 and this Court vide order dated 25.04.2022, allowed the Writ Petition and set aside the orders impugned therein by granting liberty to the petitioner to file reply to the show cause notice dated 21.03.2022 within two weeks from the date of receipt of a copy of the said order.

3.3 According to the learned counsel for the petitioner, the petitioner has filed the reply along with the copy of the order passed in W.P.No.9918 of 2022 dated 25.04.2022 on 02.08.2022, and therefore, in terms of provisions of Section 148 A (d) of the Act, the respondent is supposed to have passed the order on or before 30.09.2022, however, in the present case, the impugned orders came to be passed on 31.10.2022, and hence, the impugned orders are not sustainable as the same are also barred by limitation.

3.4 Further, the learned counsel contended that reopening proceedings initiated under Section 148 of the Act is based on information available in the Audit Objection of the Revenue Audit Part (RAP) and the Act only contemplates Final Audit Objections of the Comptroller and Auditor General of India as valid information, and therefore, the Audit Objection of the RAP cannot fall within the definition of "information" under the Act, and therefore, reopening of assessment based on such information is without jurisdiction and liable to be quashed.

4. In reply, the learned Senior Standing Counsel for the respondent-Department submitted that as per Section 149 (1) (a) an assessment can be reopened within a period of three years from the end of the relevant assessment year, in the instant case, the end of the relevant assessment year, ie. for AY 2018-19 is 31.03.2022, and hence, notice under Section 148 was issued on 31.03.2022.

4.1 Further, the learned Senior Standing Counsel submitted that the show cause notice which was initially sent by the respondent on 21.03.2022 was put to challenge by the petitioner in W.P.No.9918 of 2022, and this Court vide order dated 25.04.2022, allowed the Writ Petition and granted liberty to the petitioner to file reply to the show cause notice dated 21.03.2022 and on the petitioner's filing the reply, the respondent passed order under Section 148 A (d) and 148 dated 31.10.2022, and therefore, the issuance of notice under Section 148 A (d) dated 31.10.2022 is nothing but continuation of the proceedings contained in the show cause notice issued on 21.03.2022, and to that extent, the period of limitation would be saved, and therefore, reopening proceedings under Section 148 is not barred by limitation and the objection raised by the petitioner with regard to the validity of the show cause notice is also unsustainable.

4.2 The learned Senior Standing counsel for the respondents would further submit that the respondent-Department have received the order copy only on 16.09.2022, and therefore, the period of limitation would start reckoned only from the date, on which, the respondent-Department received the Order Copy, i.e. on 16.09.2022, and accordingly, the respondent-Department passed order under Section 148 A (d) within 1 month as provided under section 148 A (d) i.e. on 31.10.2022. Therefore, the learned Senior Standing Counsel contended that the impugned order dated 31.10.2022 is also not barred by limitation.

4.3 As regards the contention that the impugned order based on an information of RAP is not sustainable, the learned Senior Standing Counsel contended that on careful examination of ITMR of the petitioner-Company for the AY 2018-19, it is seen that Local Audit Report in the assessee's case dated 14.09.2021, which qualifies as final objection raised by the Audit Department and the same has to be considered as information as mentioned in clause ii of Explanation 1 to Section 148 of the Act. Therefore, it is contended that if any audit objection is raised, then, it would be construed as information, and based on the said information, income has to be re-assessed for which purpose, assessment proceedings have to be reopened. Therefore, the learned Senior Standing Counsel contended that the impugned orders are sustainable.

5. I have given due considerations to the submission made by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents and perused the materials available on record.

6. On perusal of records, it is seen that the show cause notice under Section 148 A (b) was issued on 21.03.2022 and subsequent to that, the respondent passed orders under Section 148 A (d) on 30.03.2022 and Section 148 on 31.03.2022. The said orders dated 30.03.2022 and 31.03.2022 as well as the show cause notice dated 21.03.2022 were challenged by the petitioner before this Court by way of W.P.No.9918 of 2022 on the ground that the petitioner was not given sufficient time to file their reply and this Court also by order dated 25.04.2022 set aside the orders impugned in the said Writ Petition and granted liberty to the petitioner to file reply to the show cause notice dated 21.03.2022, within 15 days from the date of receipt of the order.

7 Now the issue is as to whether the filing of the reply by the petitioner along with the order copy, i.e. on 02.08.2022 has to be taken into consideration for the purpose of determining the period of limitation as prescribed under the Act or from the date, on which, the order copy was received by the respondent, i.e. on 06.09.2022 has to be taken into consideration.

7.1 It is the contention of the learned Senior Standing Counsel for the respondent that the respondent-Department would take decision either based on receiving instructions from his counsel or from the receipt of original order copy from the Court. Obviously, the respondent-Department would take a decision not only based on the reply filed by the petitioner, dated 02.08.2022, since this Court granted more time to file reply, for all practicable purpose, the date on which, the respondent-Department received the order copy i.e. on 06.09.2022, would be taken into consideration for the computation of period of limitation. Therefore, this Court is in complete agreement with the contention of the learned Senior Standing Counsel for the respondents, and holds that the date of receipt of the order copy by the respondent on 06.09.2022 has to be taken into consideration for the purpose of computing the limitation period along with the reply filed by the petitioner on 02.08.2022. Therefore, this Court is of the view that the order passed under Section 148 A (d) is not barred by limitation.

7.2 The next issue that has to be decided is as to whether for all practicable purpose, the original date of notice issued by the respondent under Section 148 A (b) dated 21.03.2022 has to be taken into consideration for the purpose of computation of limitation.

7.3 As already stated supra, this Court in W.P.No.9918 of 2022 vide order dated 25.04.2022 granted liberty to the petitioner to file reply to the show cause notice dated 21.03.2022. Accordingly, the respondent-Department after taking into consideration of the said reply, the respondent-Department issued notice under Section 148 A (d) and 148 dated 31.10.2022, and therefore, the issuance of notice under Section 148 A (d) dated 31.10.2022 is nothing but continuation of the proceedings contained in the show cause notice issued on 21.03.2022 and to that extent, the period of limitation would be saved.

7.4 Therefore, the notice issued by the respondent under Section 148 dated 31.10.2022 and the proceedings initiated in pursuance thereof is considered as good as the proceedings issued within the period of limitation or otherwise, the order of the Court already passed would save the limitation. In such view of the matter, this Court is of the view that notice under section 148 is well within the period of limitation and the respondent has jurisdiction to issue the same.

7.5 As far as the contention raised by the petitioner with regard to sustainability of the impugned order based on Audit Objection is concerned, it is submitted by the learned Senior Standing Counsel for the respondent that Audit Objection has already been filed, they have been called for giving explanation and they have accepted the objection, and once the Audit Objection is accepted, the same would attain finality and based on that, the respondents have issued show cause notice. Therefore, this Court is of the view that once audit objection is issued and the same is accepted without any demur, the same attains finality and it is sufficient, if it is reported by

Comptroller and Auditor General and hence, the respondents are entitled to passed impugned order based on Audit Objection.

8. In the light of the above reasons, the Writ Petition deserves to be dismissed. Accordingly, the same is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

31.10.2023

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Index : yes/no
Neutral Citation : yes/no

To

1. The Assistant Commissioner of Income Tax,
   Corporate Circle- 4 (1)
   121, Nungambakkam High Road, Chennai.

2. The Assessment Unit,
   National Faceless Assessment Centre, Delhi.

Krishnan Ramasamy,J.,

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