IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.651 of 2022
and
W.M.P.Nos.701 and 702 of 2022

Oasys Cybernetics Private Limited,
Represented by its Director
Ilanghovan Krishnaswamy Ramajayam ... Petitioner

Vs.

The Deputy Commissioner of Income Tax,
National Faceless Assessment Centre,
Room No.401, 2nd Floor, E-Ramp,
Jawaharlal Nehru Stadium,
Delhi – 110 003. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the Impugned Notice dated 26.03.2021 issued under Section 148 of the Income Tax Act, 1961 in PAN: AACCO2848M having DIN and Notice No.ITBA/AST/S/148/2020-2021/1031777718(1) issued by the respondent and the consequential proceedings dated 22.12.2021 in ITBA/AST/F/17/2021-2022/1038039004(1) for the Assessment Year 2016-2017 passed by the respondent and quash the same as illegal.

For Petitioner	:	Mr.Ravi Kannan
For Respondent	:	Mr.A.P.Srinivas Senior Standing Counsel and Mr.A.N.R.Jayaprathap Junior Standing Counsel

ORDER

In this Writ Petition, the petitioner has challenged the Impugned Notice dated 26.03.2021 issued under Section 148 of the Income Tax Act, 1961 and the consequent Order dated 22.12.2021 passed by the respondent for the Assessment Year 2016-2017 overruling the objection of the petitioner against reopening of the Assessment.

2. The facts on record reveal that an Assessment Order was earlier passed on 28.12.2018 under Section 143(3) of the Income Tax Act, 1961 for the Assessment Year 2016-2017.

3. Aggrieved by the same, the petitioner had opted a remedy under Section 154 of the Income Tax Act, 1961, which culminated in an Order dated 12.02.2020. Simultaneously, the petitioner had also filed an appeal before the Appellate Commissioner under Section 246A of the Income Tax Act, 1961.

4. During the interregnum, the Direct Tax Vivad se Vishwas Act, 2020 was enacted and came into force with effect from 17.03.2020. Under these circumstances, the petitioner filed declaration under Section 5(1) of the said Act before the designated authority on 26.12.2020.

5. The declaration filed by the petitioner was accepted and Order came to be passed on 22.01.2021 under Section 5(1) of the said Act. After the aforesaid Order was passed on 22.01.2021 under Section 5(1) of the said Act, the Impugned Notice dated 26.03.2021 came to be issued seeking to reopen the assessment that was completed on 28.12.2018 for the Assessment Year 2016-2017. The reasons that are forthcoming for reopening the assessment are as follows:-

> "The assessee company filed its return of income for the AY 2016-17 on 17.10.2018 at a NIL income after writing off the earlier year losses to the extent of Rs.109706284. Assessment u/s 143(3) was completed on 28.12.2018 assessing the income at Rs.23,94,81,675 being 8% of gross receipts, as the assessee did not substantiate the sundry creditors.
>
> i. M/s.Omne Agate Systems Pvt. Ltd., was amalgamated with the assessee company during the Asst. Year 2014-15 and the assessee has claimed depreciation of Rs.112547489 and this was inclusive of depreciation on goodwill of Rs.68540625 and depreciation on intangible asset claimed by M/s.Omne Agate amount to Rs.20810771/-. Goodwill arising due to acquiring of M/s.Omne Agate for a purchase consideration exceeding the written down value of tangible

assets is not an allowable depreciation and by virtue of fifth proviso to Section.32(1), depreciation is allowable only to the extent as if such succession has not taken place. Hence the excess claim of depreciation of Rs.89351396 needs disallowance.

ii. The assessee has not furnished any return of income in response to the notice issued u/s 148 dt. 36.3.2018. Interest u/s 234A(3) is leviable for not furnishing the return of income for the period 4/2018 to 12/2018 (9 months) amounting to Rs.35,82,611/- on the increased tax of Rs.39806790/-.

iii. As seen from 3CD, the assessee has paid belatedly an amount of Rs.5184031 (collected from the employee) beyond the due date prescribed under the Act. The same to treated as income u/s 2(24)(x) rws 36(1)(va).

iv. As seen from the Balance Sheet for the year 2015-16, the assessee has issued share warrants for Rs.1073,530.000 which is pending conversion as on 31.3.15 and 31.3.16. The assessee has issued 107353 share warrants of 1000 each fully paid to be issued to the share holders of M/s.Onme agate systems p ltd pursuant to the scheme of amalgamation. Such warrants would be converted within one year from the effective date of the scheme based on valuation of by an independent chartered accountant. As seen from the Balance Sheet AY 2015-16, the assessee had made an addition of capital reserve during 13-14 of Rs.859,06,480/- due to amalgamation. The general reserve account to an an extent of Rs.1013,780,890/- had also been created which is due to amalgamation. Share warrant pending conversion amounting to Rs.1073530,000 has been shown as pending as on 31.3.14 also. AY 2014-15 not subjected to scrutiny. In these circumstances, it observed that as per the provisions of Section 2(1B), for a merger to quality as an amalgamation, one of the condition is that shares to be issued to the shareholders (holding three fourth in value) of amalgamating company shall be issued shares by the amalgamated company by virtue of the amalgamation. In the instant case, the assessee company, being amalgamated company has not issued shares to the shareholders of M/s.Omne Agate (amalgamating company) but issued share warrants. As the shares were not issued by virtue of amalgamation, the scheme does not hit the conditions of sec 2(1B), and the transfer is to be treated as merger as a result of transaction in the nature of sale. Consequentially exemption available of sec 47(vi) in the hands of the amalgamating company, 47(vii) in the hands of shareholders of amalgamating company (now the assessee company) needs to be withdrawn and to be taxed accordingly.

Hence, I have reason to believe that income has escaped assessment."

6. Since the petitioner failed to secure any interim order from this Court, an Assessment Order also came to be passed pursuant to the Impugned Notice dated 26.03.2021 on 31.03.2022.

7. The petitioner has filed a statutory appeal before the Commissioner of Income Tax (Appeals) under Section 246A of the Income Tax Act, 1961.

8. Arguing the case on behalf of the petitioner, the learned counsel for the petitioner would place reliance on the decision of this Court rendered in **Gopalakrishnan Rajkumar** Vs. **Principal Commissioner of Income Tax**, [2022] 445 ITR 577. Specifically, a reference is made to Paragraph 45 from the

said decision. It reads as under:-

> *"45. The intention of the parliament enacting the Direct Tax Vivad Se Vishwas Act, 2020, is to bring a closure of disputes in respect of tax arrears. Whether the petitioner had correctly or wrongly availed the benefit of Section 57(F) of the Income-tax Act or not cannot be re-opened once again under Section 263 of the Income-tax Act, 1961."*

9. Learned counsel for the petitioner would submit that even otherwise there is no material that was available for coming to a conclusion that there was material suppression of fact by the petitioner and that the attempt of the respondent vide Impugned Notice dated 26.03.2021 and the Impugned Order dated 22.12.2021 seeking to reopen the completed assessment on 28.12.2018 was nothing but a review which is frowned upon by this Court and places reliance on the decision of the Hon'ble Supreme Court in **Commissioner of Income Tax** Vs. **Kelvinator of India Ltd.,** (2010) 320 ITR 561 SC.

10. That apart, the learned counsel for the petitioner would submit that once the dispute has been settled under the provisions of the Direct Tax Vivad Se Vishwas Act, 2020, the question of issuance of notice to prolong the litigation with the Department cannot be countenanced.

11. On the other hand, the learned Senior Standing Counsel for the respondent would submit that the Order passed by the Assessing Officer on 31.03.2022 and the fact that the petitioner has filed an appeal against the said Order before the Commissioner of Income Tax (Appeals) makes it clear that the petitioner has accepted the jurisdiction of the respondent for not only passed the Impugned Order but also the Impugned Notice.

12. It is submitted that it is always open for the petitioner to converse the issue before the Appellate Commissioner in the appeal that has been instituted against the Assessment Order dated 31.03.2022.

13. The learned Senior Standing Counsel for the respondent on the other hand refers to Paragraph 32 and 33 of **Gopalakrishnan Rajkumar** Vs. **Principal Commissioner of Income Tax**, [2022] 445 ITR 577. He would state that there is a difference between the proceedings that was in contemplation of the decision of this Court in **Gopalakrishnan Rajkumar** Vs. **Principal Commissioner of Income Tax**, [2022] 445 ITR 577. It is submitted that there **Gopalakrishnan Rajkumar's case** (cited *supra*) the notice was issued under Section 263 of the Income Tax Act, 1961 whereas in the present case it is 148

notice.

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

15. I am of the view that the Impugned Notice dated 26.03.2021 seeking to reopen the assessment for the Assessment Year 2016-2017 that was completed earlier on 28.12.2018 cannot be countenanced in view of the petitioner's application filed under the provisions of the Direct Tax Vivad se Vishwas Act, 2020 and it having been accepted by the designated authority on 22.01.2021.

16. As held by this Court in **Gopalakrishnan Rajkumar** Vs. **Principal Commissioner of Income Tax**, [2022] 445 ITR 577, vide Order dated 22.04.2022, the intention of the Parliament to bring the pending income tax disputes cannot be diluted by issuance of fresh notice.

17. That apart, a reading of the reasons given for reopening the assessment vide a communication dated 19.08.2021, the content of which has been extracted above indicates that there was no fresh material available for reopening the assessment.

18. The reopening of the assessment is inspired by change of opinion and review, which is impermissible as per the decision of the Hon'ble Supreme Court in **Commissioner of Income Tax** Vs. **Kelvinator of India Ltd.,** (2010) 320 ITR 561 SC.

19. In view of the above, this Writ Petition is allowed. No costs. Connected Writ Miscellaneous Petitions are closed.

14.11.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No

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C.SARAVANAN, J.

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To

The Deputy Commissioner of Income Tax,
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