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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 04.10.2024

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**
and
THE HONOURABLE **MR. JUSTICE G.ARUL MURUGAN**

W.A.Nos.1951 and 2046 of 2011

1.The Joint Commissioner of Income-Tax,
Special Range – I
67-A, Race Course Road,
Coimbatore – 18.

2.Asst.Commissioner of Income-Tax,
Company Circle-I,
Coimbatore.

... Appellants in both W.A.'s

Vs

M/s.Sri Sakthi Textiles Ltd.,
Coimbatore Main Road,
Pollachi 642 002.

... Respondent in W.A.'s

COMMON PRAYER: Appeal filed under Clause 15 of the Letters Patent to set aside the observations and directions issued by the learned Judge in writ petition dated 4.8.2010 and restore the notice dated 5.9.97 and letter calling for objections dated 17.1.2000.

In both W.A.'s

For Appellants : Dr.B.Ramaswamy
Senior Standing Counsel

For Respondent : Mr.R.Venkatanarayanan
for M/s.Subbaraya Aiyar Padmanabhan



COMMON JUDGMENT

(Order of the Court was made by Dr.ANITA SUMANTH,J.)

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The Income Tax Department challenges an order of the learned Judge, allowing the writ petitions filed by the respondent/assessee challenging notices for re-assessment issued under the provisions of Section 148 of the Income Tax Act, 1961 (in short 'Act') on 05.09.1997.

2.The assessee had originally filed three writ petitions challenging proceedings for re-assessment for three assessment years (AY) 1991-92, 1992-93 and 1993-94. The Writ Court has dismissed the writ petition qua assessment year 1993-94 on the ground that the proceedings were initiated within time and directed the assessee to cooperate in the proceedings before the officer. A time limit was also fixed for the Department to pass final orders. That order has been accepted by the respondent and no writ appeal has been filed challenging the same.

3.Thus we are concerned with the order of the Writ Court quashing the notices for re-assessment for AYs 1991-92 and 1992-93. The petitioner had filed returns of income for the aforesaid two years within time. Intimations have been issued under the relevant provisions of the Act and the returns were thereafter taken up for scrutiny. Notices under Section 143(2) had been issued and the assessee had been heard in regard to the queries raised. Orders



of assessment had been passed thereafter under scrutiny under the provisions of Section 143(3) of the Act. Those orders dated 29.03.1994 and 21.03.1995 touch upon various issues faced and discussed in the course of assessments.

4. One of the claims of the assessee in the returns of income had been for expenditures incurred on replacement of machinery. The petitioner was engaged in the business of running a textile mill and had claimed expenditures incurred by it on replacement of various machineries as revenue expenditure, under Section 37 of the Act. In the computation of Income for AY 1991-92, the assessing authority, after referring to the discussion with the authorised representatives has accepted the claim for replacement of six spinning frames and one Autocem as revenue expenditure.

5. Likewise for AY 1992-93, he accepts a claim for replacement of machinery claimed as revenue expenditure. Those assessments were not disturbed within the period of limitation set out under Section 147 of the Act, being four years from the end of the relevant assessment year.

6. While so, and beyond the period of four years, notices came to be issued under Section 148 of the Act on 05.09.1997 for both years wherein the assessing authority states that he has reason to believe that income chargeable to tax has escaped assessment. He thus proposes to re-assess the income and calls upon the assessee to file a return of income disclosing the income that



has, according to him, escaped assessment.

7.The respondent assessee filed replies within the time stipulated reiterating that returns of income filed earlier. The Chartered Accountant, on its behalf, also sought a copy of the Reasons on the basis of which the impugned proceedings for re-assessment were initiated. The Reasons have admittedly not been furnished. However, we have the benefit of the same as the learned Judge in the course of the writ proceedings had called for the records containing inter alia, the Reasons. This fact finds mentioned in paragraph 7 of the impugned order dated 04.08.2010, where he records that no counter has been filed by the respondent and the original files have been produced for perusal.

8.Incidentally we note that even today at the stage of writ appeal, no counter has been filed by the respondent. The averments in the writ affidavit are thus un-controverted. The original files revealed that Reasons that had been recorded on 08.07.1997 prior to issuance of Section 148 notices. The Reasons read thus:-

"The assessment for the year 1991-92 has been completed under Section 143(3) of the Act on 28.03.1994. While doing so, the claim of replacement of machineries to the tune of Rs.1,06,57,527/- has been allowed wrongly as revenue expenditure instead of treating it as capital in nature and the same is eligible only for normal depreciation on the additions to the



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machineries. Hence, I have reason to believe that the income chargeable to tax has escaped assessment and the approval is sought for."

"The assessment for the year 1992-93 has been completed under Section 143(3) of the Act on 21.03.1995. While doing this assessment, the claim of replacement of machineries to the tune of Rs.64,71,550/- has been allowed fully on revenue expenditure instead of treating it as capital expenditure and the normal depreciation alone will be allowable. Hence, I have reason to believe that the income chargeable to tax has escaped assessment and the approval is sought for."

9.Dr.Ramasamy would bring to our attention the judgment of the Supreme Court in the case of *GKN Driveshafts (India) Ltd. v. Income Tax Officer*¹. In that case, the Court had set out the procedure to be followed by the assessing authorities in matters relating to re-assessment.

10.Paragraph 18 of the decision is relevant wherein the Bench states that upon receipt of a notice under Section 148 calling for a return of income, it was incumbent upon an assessee to file the return of income and thereafter seek the Reasons on the basis of which re-assessment proceedings has been initiated. The authority has bound to furnish the Reasons and thereafter the assessee is at liberty to raise objections on the aspect of assumption of jurisdiction. The assessing authority has thereafter to pass a speaking order on

¹ 259 ITR 19



the aspect of assumption of jurisdiction, before proceeding with the assessment on merits, if at all.

11.Thus, the judgment has bifurcated proceedings for re-assessment into two stages, one, where the assessee has an opportunity to question the assumption of jurisdiction and thereafter on the aspect of merits, only if the authority is unconvinced by the challenge to assumption of his jurisdiction. In the present case, learned Senior Standing Counsel would submit that the writ petitions were itself pre-mature as the first stage of proceedings, as stipulated in the case of *GKN Driveshafts (India) Ltd*, is yet to take place.

12.In our considered view, the judgment in *GKN Driveshafts (India) Ltd*. would not come to the aid of the Department in the facts and circumstances of the present case. The request of the assessee seeking the Reasons is available on record. Thus, the assessee has discharged the burden falling upon it by filing a return and seeks the Reasons.

13. It is an admitted position that the reasons have not been supplied to the assessee and it was only from the records which were perused by the writ Court that the parties and the Court had the benefit of the Reasons. Thus, in light of the default committed by the respondents of not furnishing the reasons to the assessee, and particularly at this distance of time, we are not inclined to relegate the assessee to the assessing officer for following the



procedure as set out in the case of *GKN Driveshafts (India) Ltd.* In any event, the Reasons are now available for the benefit of all concerned. This argument is rejected.

14. Upon a perusal of the Reasons and the fact that the assessments had been completed under scrutiny originally, the writ Court has come to a conclusion that the proceedings were barred by limitation as there had been no failure on the part of the assessee to make a full and true disclosure of the claim. Learned Judge has relied on a catena of judgments in support of his conclusion.

15. The submission of the Income Tax Department is twofold. Firstly, they would deny that there has been a full and true disclosure by the assessee, as according to the, the claim of replacement had been made erroneously and this would itself justify the impugned re-assessment proceedings. Secondly, they would point out that necessary sanction has been obtained under Section 151 of the Act and even for this reason, the order of the writ Court is contrary to law. In this regard, Dr. Ramasamy would rely on the following citations:

- 1) *Ess Ess Kay Engineering Co. (P.) Ltd. V. CIT*²
- 2) *CIT V. S.Nalini*³
- 3) *Honda Siel Power Products Ltd. V. DCIT*⁴
- 4) *Phool Chand Bajrang Lal V. ITO*⁵

² [2001] 247 ITR 818 (SC)

³ [2002] 252 ITR 788 (Ker.)

⁴ [2012] 340 ITR 53 (Delhi)

⁵ [1993] 203 ITR 456 (SC)



- 5) *A.L.A.Firm V. Commissioner of Income-Tax*⁶
- 6) *Rakesh Aggarwal V. ACIT*⁷
- 7) *ACIT V. Rajesh Jhaveri Stock Brokers P. Ltd.*⁸
- 8) *Yuvraj V. Union of India*⁹
- 9) *ITO V. Lakhmani Mewal Das*¹⁰

16. On the basis of the aforesaid submissions, learned Senior Standing Counsel would assail the order of the writ Court reiterating that the proceedings for re-assessment had been made in accordance with law and ought to have been sustained.

17. Per contra, Mr.R.Venkatanarayanan, learned counsel appearing for the respondent/assessee would support the orders of the Writ Court drawing attention to the statutory condition which required proceedings for re-assessment to be completed within a period of four weeks except if there had been a failure on the part of the assessee to make a full and true disclosure. He draws attention to the orders of assessment passed initially to establish that the assessee had made a full and true disclosure which had also been considered by the assessing authority while framing the assessments.

18. Relying on the judgments in the case of (i) *Assistant Commissioner of Income-tax v. ICICI Securities Primary Dealership Ltd.*¹¹, (ii) *Deputy*

⁶ [1991] 189 ITR 285 (SC)

⁷ [1997] 225 ITR 496 (Delhi)

⁸ [2007] 291 ITR 500 (SC)

⁹ [2009] 315 ITR 84 (Bombay)

¹⁰ [1976] 3 SCC 757

¹¹ 348 ITR 299 (SC)



*Commissioner of Income-tax v. Pala Marketing Co-operative Society Ltd.*¹²

and (iii) *SESA Goa Ltd. V. Joint Commissioner of Income Tax & Others*¹³, he

would submit that the order of the writ Court was unimpeachable and ought to be sustained. He also points out that for the subsequent AY 1992-93 where the notice had been issued within the period of four years, the writ Court had decided adverse to the assessee and there had been no challenge by the assessee thus emphasising the co-operation of the assessee in the proceedings.

19. Having heard both the learned counsel and devoted anxious attention to their submissions and the cases relied upon we pass the following order.

20. There is no dispute on the following admitted positions:

(i) returns of income had been filed in time and had been taken up for assessment by the assessing authority;

(ii) there had been detailed discussion as set out in the orders of assessment dated 29.03.1994 and 21.03.1995 in regard to the various issues that had been identified by the assessing officer requiring discussion;

(iii) in the orders of assessment, the officer has seen to have applied his mind in identifying the claim of the assessee in regard to replacement. The

¹² 243 ITR 499 (Kerala)

¹³ 294 ITR 0101 (Bombay)



relevant portions in the computation portion of the order, read as follows:

(AY 1991-92)

*Replacement of 6 spinning frames
claimed as revenue expenses Rs.33,38,301*

*Replacement Autocem
1 No. claimed as revenue expenses Rs.73,18,226*

(AY 1992-93)

*Replacement of machinery
claimed as revenue expenditure:*

<i>3 mps. Two in one Twister</i>	<i>Rs.29,66,803</i>
<i>1 No. Conewinder</i>	<i>Rs. 5,16,491</i>
<i>2 nos. Carding machine</i>	<i>Rs.20,00,934</i>
<i>2 nos. Drawing machine</i>	<i>Rs. 8,01,556</i>
<i>Auto coner additions</i>	<i>Rs. 14,216</i>
<i>Humidification Plant</i>	<i>Rs.1,71,550</i>

Rs.1,10,39,124

We thus note that the assessing authority has looked into the issue of whether the claim is in order and has consciously accepted the claim of the assessee under Section 37 of the Act. In fact, in the earlier part of the computation, he has rejected other claims of the assessee and hence this is not a case where the grant of the claim towards replacement of machineries is either mechanical or without application of mind.

(iv)The notices under Section 148 have been issued on 05.09.1997 beyond the period of four years from the end of the relevant AYs.



(v) the assessee as on 10.12.1997 specifically stated that the returns originally filed may be taken as filed in response to notice under Section 148 and they have also sought the reasons based on which the impugned proceedings have been initiated.

(vi) there has been no furnishing of reasons as mandated by the Supreme Court in the case of *GKN Driveshafts (India) Ltd.* (supra).

(vii) the assessing authority has proceeded to issue notice dated 17.01.2000 calling for objections for the proposed re-assessment proceedings on the merits of the matter. Thus, opportunity at the first stage, of objecting to the assumption of jurisdiction, has been denied to the assessee.

(viii) in notice dated 17.01.2000, the scope of re-assessment itself stands expanded insofar as in addition to the amounts relating to replacement of machinery, the assessing authority has also proposed the addition in respect of conversion materials which does not form part of the reasons for re-assessment.

21. Thus, the scope of re-assessment has been enlarged three years after issuance of Section 148 notice and recording of proceedings. Incidentally, the issuance of notice dated 17.01.2000 is itself contrary to the diktat of Section 148(2), which requires an order of re-assessment under Section 147 to be made within the expiry of one year from the end of the financial year in which



the notice under Section 148 was served.

22.The notices in the present case are dated 05.09.1997 and are expected to have been served proximate to that date. In fact, taking the date of the assessee's response to the notices as the date of service, 10.12.1997, the period of limitation as per Section 148(2) would have expired on or before 31.03.1999. Hence, notice dated 17.01.2000 is itself beyond the period stipulated under Section 148(2). However, since this point has come to our notice incidentally and has not been taken by the assessee, we leave it at that.

23.Section 147 of the Act deals with re-assessment and prescribes a limitation of four years for passing of an order of re-assessment. The proviso to Section 147 enlarges the limitation for a period of six years in circumstances where the escapement of income arises from the failure of the assessee to have filed a return, failure to have filed a return in response to a notice under Section 142(1) or failure to make a full and true disclosure of income at the first instance.

24.In the present case, the assessing authority has invoked the third limb of the proviso to Section 147 as there has, admittedly been no failure on the first two counts. Hence, we are required to test whether the invocation of the third limb of the proviso to Section 147 in the present case is correct.

25.The writ Court has a categoric finding that there is no failure on the



part of the assessee to have made a full and true disclosure based on the materials available on record. We are in complete agreement with the findings and the conclusion of the writ Court.

26. In addition, we also note as recorded by us in preceding paragraphs supra that in the order of assessment, the assessing authority is seen to have applied his mind to the claim of expenses incurred on replacement and hence all details available in regard to the claim of replacement were well available as part of the record before the assessing authority.

27. The only difference of opinion arises from whether the claim should be allowed as being revenue or rejected as capital. On the same materials as form part of the records, the original assessing officer has accepted the claim. There has been no additional material brought on record by the Department. On the same materials, the successor officer is of the view that the claim ought have been rejected as capital, indicating clearly, a change of opinion on the part of the assessing authority.

28. The Supreme Court in the case of *ICICI Securities Primary Dealership Ltd. (supra)* had occasion to deal with a similar issue. The assessee there, had claimed a loss arising from trading in shares, as a business loss. The claim of the assessee had been accepted originally. Proceedings for re-assessment had been initiated beyond the period of four years as the



assessing authority was of the view that the loss was speculative and ought not to have been allowed originally.

29.He proceeded to re-assess the income, which re-assessment had been quashed by the Bombay High Court, on the ground that all material in regard to the claim of loss were part of the record and all details in regard to the loss were also duly disclosed by the assessee. Their order was upheld by the Supreme Court in the following terms:

'The assessee had disclosed full details in the Return of Income in the matter of its dealing in stocks and shares. According to the assessee, the loss incurred was a business loss, whereas, according to the Revenue, the loss incurred was a speculative loss. Rejection of the objections of the assessee to the re-opening of the assessment by the Assessing Officer vide his Order dated 23rd June, 2006, is clearly a change of opinion. In the circumstances, we are of the view that the order re-opening the assessment was not maintainable.'

30.The facts in this case are more or less similar insofar as all details in regard to the claim of expenditure relating to replacement of machineries as revenue, is part of the records and had also been specifically noted and allowed by the assessing authority originally. In fact, it is not even the case of the Department that the assessee has failed to make a full and true disclosure as there is no allegation in this regard in the Reasons recorded.



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31.Hence, we are of the considered view that there is no justification for the initiation of proceedings for re-assessment invoking the extended limitation in the absence of any failure of the assessee to have made a full and true disclosure at the original instance. In light of the discussion above, and the authoritative pronouncement of the Supreme Court referred to supra, we see no reason to advert to the other decisions relied upon by the parties. The order of the Writ Court is upheld and these writ appeals are dismissed. No costs.

(A.S.M.,J) (G.A.M.,J)
04.10.2024

Index: Yes
Speaking Order
Neutral Citation : Yes
vs



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