IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2024

CORAM

THE HON'BLE **MR JUSTICE C. SARAVANAN**

**W.P.Nos.4201 and 4197 of 2022**
**and**
**W.M.P.Nos.4352 and 4347 of 2022**

GSK Technology Park Private Limited,
Rep.by its Managing Director
Shri.K.V.Ramana Shetty,
S/o. Shri. G.K. Shetty,
Aged 61 Years,
3, Club Road, Chetpet,
Chennai – 600 031. ...Petitioner

Vs.

The Assistant Commissioner of Income-Tax,
Central Circle – 1(1),
Room No.320, 3rd Floor,
Investigation Building,
No.46 (Old No.108),
Mahatma Gandhi Road,
Chennai – 600 034. ...Respondent

**Prayer in WP.No.4201 of 2022**:Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorai, calling for the records in DIN & Letter No:ITBA/AST/F/17/2021-22/1039598439(1) dated 10.02.2022 on the file of the respondent relating to the AY. 2014-15.

**Prayer in WP.No.4197 of 2022**:Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorai, calling for the records in DIN & Letter No:ITBA/AST/F/17/2021-22/1039598459(1) dated 10.02.2022 on the file of the respondent relating to the AY. 2015-16.

| | | |
|---|---|---|
| For Petitioner | : | Mr.G.Baskar |
| For Respondent | : | Mr.AP.Srinivas<br>Sr. Standing Counsel |

**COMMON ORDER**

By this common order both the writ petitions are being disposed of.

2. In both these writ petitions, the petitioner has challenged the impugned orders both dated **10.02.2022** passed for the Assessment Year 2014-15 and 2015-16, disposing of the objection to re-open of the assessment completed for the Assessment Year 2014-15 and 2015-16. The impugned orders are the ultimate culmination of the notice issued under **Section 148** of the **Income Tax Act, 1961** dated **31.03.2021**.

3. The petitioner appears to be a company engaged in the development and management of Special Economic Zone and had claimed the benefit of deduction under Section **80 IAB** of the **Income Tax Act, 1961**. The assessments were completed originally for the respective assessment years **2013-14**. These were scrutiny assessments under **Section 143 (3)** of the **Income Tax Act, 1961**. After the assessments were completed, a search under **Section 132** of the **Income Tax Act, 1961** was conducted on **04.01.2017.** Thereafter, the petitioner was issued with notices under **Section 153 A** of the **Income Tax Act, 1961** for the Assessment Year **2014-15** and **2015-16**.

4. These notices that were issued under **Section 153 A** of the **Income Tax Act, 1961** resulted in fresh assessment orders dated **31.12.2018** for both the assessment years. Wherein, the original assessment completed on **25.12.2016** for the assessment year 2014-15 was accepted and the assessment was completed as far as the succeeding year namely 2015-16. Thereafter, impugned notice dated **31.03.2021** were issued, wherein the department had furnished following reasons for reopening the reasons for the respective assessment years under **Section 148** of the **Income Tax Act, 1961**. It reads as under:-

1. *The assessee M/s GKS Technology Park Private Limited (PAN:AACCG6703D) filed its return of income for the A.Y. 2014-15 on 29.11.2014 declaring a total income of Rs.NIL. Subsequently, the assessee filed its return of income for the A.Y.2014-15 u/s 153A on 20.01.2018 declaring a income of Rs.Nil. The assessment u/s 143 (3) r.w.s 153A was completed on 31.12.2018 determining the assessed income at Rs.1,52,93,170.*
2. *Information on record indicates that the assessee company claimed inadmissible loss (fictitious losses in illiquid derivates/derivative trading on BSE exceeding Rs.1,00,000 (Rs.2,47,89,750) out of the several transactions running into several lakhs of rupees.*
3. *In the circumstances, I have reason to believe that income exceeding Rs.1,00,000 chargeable to tax, has escaped assessment for the AY.2014-15 in the case of M/s GKS Technology Park Private Limited on account of failure on the part of the assessee to disclose fully and truly all the material facts necessary for its assessment in the instant case."*

5. The petitioner has given a detailed reply on **07.12.2021** wherein the reopening of the assessment completed under **Section 153 (A)** read with **Section 143 (3)** of the **Income Tax Act** has been questioned by the petitioner on the ground of jurisdiction namely change of opinion inspired by the decision

of the Hon'ble Supreme Court in **CIT Vs. Kelvinator of India Ltd.,** [(2010) 320 ITR 561 (SC)], absence of any tangible material.

6. It is submitted that there is no failure on the part of the petitioner, fully and truly disclosure of material facts and that there were no material suppression of facts by the petitioner or that the petitioner had failed to truly and fully disclose required material to complete assessment on merits. Few other submissions were made in the said reply. It is therefore, submitted that the impugned order passed by the respondent on **10.02.2022**, are liable to be interfered with.

7. Learned counsel for the respondent has drawn attention to the para No.8 of the counter which read identically. Para No.8 of the counter in WP.No.4201 of 2022 for the assessment year 2014-15 and Para No.8 in WP.No.4197 of 2022 for the assessment year 2015-16. The contention of the respondent are as under :-

| **W.P.No.4197 of 2022** | **W.P.No.4201 of 2022** |
|---|---|
| *As per the said ledger extracts, the transaction is to the extent of Rs.3,98,24,147/- whereas as per the information received the transaction is to the extent of Rs.53.39 crores. Thus, it is evident that the petitioner had not fully and truly disclosed all material facts to* | *As per the said ledger extracts, the transaction is to the extent of Rs.2,48,80,246/-, whereas as per the information received the transaction is to the extent of Rs.53.39 crores. Thus, it is evident that the petitioner had not fully and truly disclosed all material facts to* |

| W.P.No.4197 of 2022 | W.P.No.4201 of 2022 |
|---|---|
| *conclude the assessment u/s. 143 (3) r.w.s 153 A. Hence, the Assessing Officer has rightly reopened the assessment for the 5th year by issuance of notice u/s. 148.* | *conclude the assessment u/s. 143 (3) r.w.s 153 A. Hence, the Assessing Officer has rightly reopened the assessment for the 5th year by issuance of notice u/s. 148.* |

8. On a specific query from the petitioner, as to which the company was incorporated for developing Special Economic Zone and its involvement in the trading options, there was no answer for that.

9. The learned counsel for the petitioner submits that this instruction would be able readily available in the statement of profit and loss that were filed for the respective assessment years for loss. It is sought to be explained as Future and Loss. The petitioner should have normally brought to the knowledge of the department that the expenditure that was claimed to be deducted in terms of **Section 80 IAB** that was an “eligible deduction” from the trading of derivatives in the stock market, which has not been done. The extracted portion of the counter indicates that there has not been true and full disclosure of all material, before the assessment was completed. The department is, therefore, justified in reopening of the assessment. It is open to the petitioner's convenience, the Assessing Officer indeed that no tax is payable on account of the reasons stated in the affidavit.

10. It is open for the petitioner also to convenience that even if the expenditure is disallowed **under Section 80 IAB** of the **Income Tax Act, 1961**, it is open for the petitioner to explain that the petitioner would be entitled to the benefit of the **Circular No.37 of 2016** [F.No.279/MISC./140/2015/ITJ] dated **02.11.2016**.

11. With the above liberty, these writ petitions stand disposed of, there shall be no order as to costs. Connected Miscellaneous petitions are closed.

**23.09.2024**

Index: Yes/No
Speaking Order: Yes/No
Neutral Citation Case: Yes/No
NST

To:

The Assistant Commissioner of Income-Tax,
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**C.SARAVANAN, J.**

NST

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