IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 04.07.2023	**Pronounced on:** 23.01.2024

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.9618 of 2021
and
W.M.P.Nos.10201 & 10202 of 2021

Deveraj Ramasamy Mani .. Petitioner

Vs.

The Assistant Commissioner of Income Tax,
Non-Corp, Circle-1, CBE,
Coimbatore Main Building,
63, Race Course Road,
Coimbatore – 641 018. .. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records on the file of the respondent in PAN No.: AIKPM9672L and quash the impugned notice under Section 148 of the Income Tax Act, 1961 in ITBA/AST/S/148/2019-20/1026555692(1) dated 13.03.2020 and the consequential proceedings in ITBA/AST/F/17/2020-21/1031746114(1) dated 25.03.2021 passed by the respondent as illegal and without jurisdiction.

For Petitioner : Mr.R.Sivaraman

For Respondent : Mrs.S.Premalatha
Senior Standing Counsel
for Mr.R.S.Balaji
Senior Standing Counsel

ORDER

The petitioner is aggrieved by the impugned order dated 25.03.2021 disposing of the objections of the petitioner seeking to re-open the assessment under Section 148 of the Income Tax Act, 1961.

2.The relevant part of the impugned order dated 25.03.2021 disposing of the objections of the petitioner to re-open of the assessment under Section 148 of the Income Tax Act, 1961, reads as under:-

> "*7. The assessee has further objected to the Reopening of the assessment, quoting certain case laws. It is stated that the issue was concluded after proper verification during the 143(3) assessment and the Reopening amounted to "Change of Opinion" by the present incumbent A?. The assessee has sought for a speaking order on the issue. The assessee did not file Return of Income in response to the notice issued u/s 148 and hence his objection to the Reopening proceedings" has no valid grounds of eligibility to raise the objection. Nevertheless, the issue is discussed here below for clarity.*
>
> *a. The entire Scrutiny assessment was more focused on Agricultural incomes issue and Sundry creditor issues.*

b. The issue of "Bad debts" was passed without further query on the basis of the court affidavits filed by the assessee against such parties. However, the assessee did not leave any hint that the same debts were retained as "Provisions" also in the Balance Sheet. As the "Bad debts written off" claim was different from the "Balance Sheet" figures, the AO did not make further query on the issue.

c. The assessee's further explanation and the contents of the "objection" letter go to prove that the "Bad debts" claim is the same, as included in the "Provisions" in the Balance Sheet figures. Hence the belief that the income has escaped assessment is true only. The assessee during the Scrutiny proceedings did not make a true and full disclosure of its affairs.

d. The reopening proceeding is initiated after noting a slight similarity, between the two figures which belief was later proved to be true by the assessee himself. Hence the reopening is not out of a "Review of Proceedings" but warranted due to the lack of true disclosure of facts by the assessee.

8. Hence the Reopening is initiated on valid grounds. The assessee's objection, whatever, also stand disposed by this order."

3.The specific case of the petitioner is that the scrutiny assessment was completed under Section 143 (3) of the Income Tax Act, 1961, on 24.02.2016, which preceded notice issued to the petitioner under Section 143(2) on 11.09.2014 and notice under Section 142(1) on 25.05.2015 which was also replied by the petitioner.

4.Specifically, it is submitted that the petitioner had clearly written-off all his bad debt in his profit and loss account for a sum of Rs.42,67,505/- and this amount was also reflected in the Income Tax Returns filed by the petitioner under Section 139 of the Income Tax Act, 1961, for the assessment year 2013 – 2014 on 25.10.2013.

5.Specifically, a reference was made to Sl.No.3 (d) (ii) (D). It is submitted that the aforesaid amount was again reflected in the same return in Sl.No.37 "Bad debts" for the aforesaid sum. It is submitted that along with the returns, the petitioner had not only filed the profit and loss account, but also the balance sheet and in the balance sheet, the petitioner had made a provision as is required to be maintained. A reference was made to the balance sheet which was filed along with the return, wherein, in the liability side, the petitioner had shown a sum of Rs.42,67,505/- in his provisions and in the trial balance, the aforesaid amount was shown as outstanding expenses for Rs.25,000/- and provisions for bad and doubtful debts as Rs.42,42,505/-, amounting to Rs.42,67,505/-.

6.It is submitted that once the assessment was completed under Section 143(3), after issuance of notice and after a proper scrutiny, question of invoking extended period of limitation to the proviso to Section 148 of Income Tax Act, 1961 as it stood prior to amendment did not arise and therefore, the impugned order disposing of the objection of the petitioner to re-open of the assessment after expiry of four years is liable to be interfered with.

7.It is submitted that the only reason given by the respondent for re-opening assessment is what was state in the notice in the annexure to notice dated 28.09.2020, issued under Section 142(1) of the Income Tax Act, 1961 after the notice under Section 148 of the Income Tax Act, 1961 was issued.

8.It is submitted that re-opening of the assessment was unwarranted and inspired from a change of opinion by the subsequent incumbent. In this connection, a reference is also made to the order conducted by the Department, wherein pointed out to the above, the Department replied that the assessee has proceeded the cases against the debtors in the Court and that cases were pending disposal. Hence, the petitioner had made provisions for bad debt without writing of.

9.The learned counsel for the petitioner would submit that there is no material that were available for invoking Section 148 of Income Tax Act, on 13.03.2020. It is submitted that the assessment order that was passed under Section 143(3), has considered all the documents, namely "Profit and Loss Account and the Balance Sheet of the petitioner and therefore, question of invoking proviso to Section 148 did not arise.

10.The learned counsel for the petitioner would further submit that even otherwise on merits, the Hon'ble Supreme Court decision in ***T.R.F. Ltd., Vs. Commissioner of Income Tax***, [2010] 190 Taxman 391 (SC) has held that it is enough if the bad debt is written off as irrecoverable in the accounts of the assessee. It is submitted that in this case, the amount was indeed "written off" in the Profit And Loss Amount and therefore on merits, there is no case made out allthough the petitioner has a right to recover the amount from the debtor. In this regard, a reference was also made to the decision of the Division Bench of this Court recently rendered in the case of ***Assistant Commissioner of Income Tax Vs. Seshasayee Paper and Board Ltd.***, [2023] 148 Taxmann.com 432 (Madras).

11.Finally, the learned counsel for the petitioner drew the attention to yet another decision of this Court in ***Mobis India Ltd. Vs. Deputy Commissioner of Income Tax***, [2022] 145 Taxmann.com 131 (Madras).

12.A reference was also made to the following passage from the said decision, which reads as under:-

" 11.

I......

II.....

III. Opinion need not be expressed - ?For applying the limitation of change of opinion with regard to power of reassessment:

There was a faint attempt by the learned counsel for the Respondent to suggest that for the restriction of change of opinion on power of reassessment to apply the original order of assessment must disclose that the issue sought to be re~opened was dealt with and finding rendered on the same during the assessment. In other words, it is submitted that for an assessment to be considered as a result of change of opinion it was necessary that in the original assessment it must be dealt with expressly and finding rendered thereon. The above submission is unsustainable, inasmuch as even the Assessing Officer, while responding to the Audit had made it clear, that the audit objection constitutes change of opinion. In any view, the above question need not detain us for long as it is well settled that once a query is raised during the assessment *proceedings and an assessee submits its reply/responds to it and asessments are completed thereafter. It follows that the said issue has been considered by the Assessing Officer and the mere fact that the assessment order may not contain reference / discussion with regard to the same would not dilute or take away the fact that the issue was in fact examined and decided upon by the assessing officer, thus a revisit/reassessment on such issues would constitute change of opinion which is impermissible. In this regard, it may be relevant to refer the judgment of Bombay High Court in the case of Aroni Commercials Ltd., vs. Deputy Commissioner of Income~Tax and Another reported in [2014] 362 ITR 403 (Bom), the relevant paragraph is referred to as under:*

--12. The power to reassess cannot be exercised on the basis of mere change of opinion. If all the facts are available on record and a particular opinion is formed, then merely because there is change of opinion on the part of the assessing officer Section 147 and 148 does not permit reassessment are not possible. The power under sections 147 and 148 cannot be exercised to correct errors/mistakes on the part of the assessing officer while passing the original order of assessment. There is sanctity bestowed on an order of assessment and the same can be disturbed by exercise of powers under section 147 and 148 only on satisfaction of the jurisdictional requirements.

......

......

......

17.In any view, it appears that the audit objection in the present case is in excess of its jurisdiction inasmuch as it has decided on the legality of depreciation on DVN. In other words rather than furnishing new tangible material to the assessing officer and leaving it open to the assessing authority to decide for itself whether the circumstances and the material warrant reassessment,

> *has instead issued directions which are more in the nature of direction/ command as to the manner in which the reassessment and the claim of depreciation ought to be dealt with by the Assessing Officer. The audit report-s view on a question of law is at variance/disagreement with that of the assessing officer who is conferred with the jurisdiction to make the assessment. The expression of opinion or evaluation of law and its bearing on assessment by the Audit in our view is in excess of its jurisdiction. The opinion of the Audit on a question/evaluation of law would not, rather cannot be the basis for reopening. More so, when admittedly the assessing officer was of the view that it has already examined the issue of depreciation during the course of assessment under Section 143(3) of the Income Tax Act, 1961, which we are afraid, is impermissible."*

13.Finally, the learned counsel for the petitioner would submit that even otherwise as and when the amount is recovered, the petitioner will be paying the tax under Section 36 (i) (vii) of the Income Tax Act. Therefore, even on this count, there is no case is made out for invoking Section 148 of Income Tax Act. It is submitted that there was no failure on the part of the petitioner to either disclose full or truly all material facts that were necessary for assessment under 143(3) of the Income Tax Act, 1961.

14.Finally, the learned counsel for the petitioner would submit that the notice issued under Section 148 of the Income Tax Act is inspired from the audit objection. Only the explanation of the officer, who had passed the assessment order has been elicited. Therefore, it is submitted that the impugned order is liable to be quashed.

15.Defending the impugned order, the learned counsel for the respondent would submit that the impugned order requires no interference. It is also submitted that though notice under Section 148 of the Income Tax Act, 1961 was issued on 13.03.2020 and called upon the petitioner to file the return within 30 days, the petitioner failed to file the return. It is submitted that after notice under Section 142(1) of the Income Tax Act, 1961 was issued on 28.09.2020 the petitioner merely replied by asking the department to furnish the reasons for re-open of the assessment under Section 148 of the Act and it is only thereafter the petitioner has filed Return Of Income on 13.10.2020.

16.It is submitted that the impugned order does not have any interference as the petitioner has deliberately mislead the department and taken stand that bad debt was written off in the Profit And Loss Account and at the same time as treated the same amount as liabilities 'provisions'.

17.It is therefore submitted that having mislead the department in the Return Of Income, merely because the petitioner had enclosed the copies of the Profit And Loss Account and the Balance Sheet did not mean that the petitioner has fully disclosed all the materials that were required for assessment. It is submitted that the impugned order disposing of the objection of the petitioner justifying the re-opening of the assessment is not inspired from either on account of any change of opinion of the incumbent and prayed for dismissal of the Writ Petition.

18.By way of rejoinder, the learned counsel for the petitioner would submit that the amount the amount recovered has been taxed in the succeeding financial year.

19.I have considered arguments advanced by learned counsel for the petitioner and the learned counsel for the respondent. I have also perused the records.

20.The point for determination is whether there were or there were no jurisdictional facts available for the Assessing Officer to invoke the powers under proviso to Section 148 of the Income Tax Act,1961.

21.In my view there is no merits in the present writ petition as the petitioner has misled the department. Although in the returns, it was stated that the petitioner had written off the debt from its Books of Accounts, namely Profit And Loss Accounts, the fact remains that petitioner has made a "provision" in the Balance Sheet. This ought to have been brought to the knowledge of the Assessing Officer at the time of assessment under section 143 (3) of the Income Tax Act, 1961.

22.Mere filing of the documents is not sufficient if there was a deliberate attempt to mislead the department in the Returns filed under section 139 of the Income Tax Act,1961 in variance with the Books of Accounts, namely Profit And Loss Accounts.

23.The amount that has been written off has been provisioned in the Balance Sheet. Window dressing in the Books of Account conveying different meanings cannot be said to be a correct declaration of materials that were required for passing the Assessment Order.

24.Therefore, there is no merits in the present writ petition. It is liable to be dismissed. However, if the petitioner has paid tax during the succeeding Assessment Year on the recovery made, the petitioner shall be entitled to refund of such tax.

25.Writ Petition is accordingly dismissed with the above observations. Consequently, all miscellaneous petitions are closed. No costs.

23.01.2024

krk
Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

To

The Assistant Commissioner of Income Tax,
Non-Corp, Circle-1, CBE,
Coimbatore Main Building,
63, Race Course Road,
Coimbatore – 641 018.

C.SARAVANAN, J.

krk

W.P.No.9618 of 2021

23.01.2024