IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.10719 of 2022
and
W.M.P.Nos.10359 and 10362 of 2022

Nuray Chemicals Private Limited,
Represented by its Director,
J.Jayaseelan
111, SIDCO Industrial Estate Limited,
Thiruvalluvar,
Tamil Nadu – 600 003. ... Petitioner

Vs.

1.The Assistant Commissioner of Income Tax,
Corporate Circle 4(1),
121, M.G.Road, Nungambakkam,
Chennai – 600 034.

2.The Additional/Joint/Deputy/Assistant Commissioner
of Income Tax/Income Tax Officer,
National Faceless Assessment,
Delhi. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records of the respondents contained in their notice bearing DIN & Notice

No.ITBA/AST/S/148/2020-21/1032106615(1), dated 31.03.2021, issued by the 1st respondent under Section 148 of the Income Tax Act, 1961, for PAN:AAECN0289P for Assessment Year 2016-17, and all proceedings in furtherance thereof, including but not limited to the assessment order bearing DIN: ITBA/AST/S/147/2021-22/1041614056(1), dated 26.03.2022 passed by the 2nd respondent under Section 147 r/w Section 144 r/w Section 144B of the Income Tax Act, 1961, for PAN: AAECN0289P for Assessment Year 2016-17, and to quash the same as arbitrary, illegal and unjust, and to consequently forbear the respondents or their superiors, subordinates, agents etc., from re-assessing the petitioner's income for the Assessment Year 2016-17 under Section 147 of the Income Tax Act, 1961.

For Petitioner : Mr.Suhrith Parthasarathy

For Respondents : Mr.V.Mahalingam
Senior Standing Counsel
asst. by
Mrs.S.Premalatha
Junior Panel Counsel

ORDER

The petitioner is before this Court against the impugned order passed by the respondents on 26.03.2022 issued under Section 147 read with Section 144 and Section 144B of the Income Tax Act, 1961.

2. The facts on record indicates that the petitioner had originally filed a return of income on 12.04.2017, declaring a Nil income in the return. The return was also processed under Section 143(1) of the Income Tax Act, 1961 on 09.05.2017. It appears that the petitioner had failed to declare the correct taxable income in the return that was filed on 12.04.2017 and therefore a notice was issued to the petitioner on 31.03.2021 under Section 148 of the Income Tax Act, 1961. In response to the same, the petitioner has filed a return of income dated 09.07.2021, which was neither signed nor e-verified. Therefore, the same was not taken up for consideration. However, it appears that the petitioner has subsequently filed revised return on 11.03.2022. After proceedings was initiated pursuant to notice dated 31.03.2021, under Section 148 of the Income Tax Act, 1961, several communications/notices were sent from the Department. Ultimately, a Show Cause Notice dated 16.03.2022 was issued, wherein, the petitioner was called upon to appear for a personal hearing and to offer reply by 21.03.2022. The petitioner was also heard on 25.03.2022, and thereafter the impugned order has been passed.

3. The impugned order is primarily challenged on the ground that the safeguards given by the Hon'ble Supreme Court in ***GKN Driveshafts (India)***

Ltd Vs. ***Income Tax Officer and Ors*** reported in 259 ITR 19 (SC), for furnishing the reasons and for further proceeding under Section 147 of the Income Tax Act, 1961 was not given, merely because, the Department had concluded the return that was filed by the petitioner on 09.07.2021 was not e-verified/not signed. The explanation forthcoming from the petitioner is that there were some technical glitches and therefore the return was not e-verified.

4. The learned counsel for the petitioner would further submit that the reasons for re-opening of the Assessment was first time furnished to the petitioner and the Show Cause Notice was issued on 16.03.2022, which was also replied by the petitioner.

5. It is noticed that earlier communication was addressed to the petitioner on 07.03.2022, wherein, it has been stated that in response to the Notice issued under Section 148 of the Income Tax Act, 1961, copy of reasons recorded for issuance of Notice under Section 148 was not supplied to the petitioner, as no return was filed with e-verification, as is required under the provisions of the Act.

6. The learned Senior Standing Counsel for the respondents on the other hand would submit that the impugned Assessment Order dated 26.03.2022, that were made by the petitioner had claimed imaginary loss from sale of derivatives. It is further submitted that in the return that was filed by the petitioner on 12.04.2017, the petitioner had wrongly given the details of short term capital gain and had admitted to loss of Rs.2,79,27,839/-. However, by a communication dated 24.02.2022, the petitioner has submitted that short term capital gain of Rs.54,12,57,222/-.

7. That apart, it is submitted that the cost of acquisition was inflated and therefore the Assessment was completed and does not call for any interference.

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

9. The invocation of proceedings under Section 147 of the Income Tax Act, 1961 to the issuance of Notice under Section 148 of the Income Tax Act, 1961 in the given facts and circumstances of the case cannot be questioned.

10. Admittedly, the petitioner has admitted to the wrong return of Income that was filed on 12.04.2017 in its communication dated 24.06.2022. Since the return was also not e-verified, the reasons were not furnished to the petitioner which entitled the petitioner to request for a speaking order. However, the petitioner had allowed the Department to issue Show Cause Notice dated 16.03.2022, which has now culminated in the impugned order.

11. The claim of the petitioner is that though there were short term capital gains there were also loss from the sale of derivatives which has been denied merely on the ground that the return that was filed on 09.07.2021, could not be allowed as the returns were not e-verified. As per the decision of the Hon'ble Supreme Court in the case of ***Goetze (India) Ltd*** Vs. ***CIT*** 2006 (284) ITR 323 (SC), a claim which was not made in the Return cannot be allowed by the Assessing Officer. The Return that was filed by the petitioner

on 09.07.2021 even though it was not e-verified, was admittedly substituted by another return on **11.03.2022**. Thus, it cannot be said that the petitioner did not file the return to claim set off/deduction for the alleged/purported loss or loss from the sale of derivatives as has been observed in the impugned order.

12. To balance the interest of both the petitioner and the Income Tax Department, the impugned order can be set aside and the case can be remitted back to the respondents to re-examine whether the claim of the petitioner on the alleged loss incurred from the sale of derivatives can be allowed or not, as invocation of Section 144 of the Act, for assessment by best judgment method in impugned Assessment Order is not justified.

13. Under these circumstances, the impugned order is quashed and the case is remitted back to the respondents to pass a fresh order on merits and in accordance with law. It is made clear that invocation of machinery under Section 148 of the Act for the purpose of 147 of the Act, cannot be the subject matter of fresh dispute in the denovo proceedings.

14. The respondents shall examine the return filed on 11.03.2022, strictly in accordance with the provisions of the Income Tax Act, 1961 and the rules made thereunder. The respondents are directed to re-open the portal and permit the petitioner to make additional submissions, if any.

15. This Writ Petition stands allowed with the above observations. No costs. Consequently, connected writ miscellaneous petitions are closed.

19.11.2024

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