IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.12.2024

Coram:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.12418 of 2022
and W.M.P.Nos.11887 & 11889 of 2022

M/s.V.T.Impex LLP,
(Formerly M/s.V.T.Impex Limited)
No.12, SBI Officers Colony,
Arumbakkam,
Chennai – 600 106.

...Petitioner

Versus

1.Deputy Commissioner of Income Tax,
Corporate Circle 3(1),
121, Mahatma Gandhi Road,
Nungambakkam,
Chennai – 600 106.

2.National Faceless Assessment Centre,
Mayur Bhawan, Connaught Lane,
Barakhamba,
New Delhi – 110 001.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records in impugned Assessment Order DIN No.ITBA/AST/S/147/2021-22/1042073059(1) dated 30.03.2022 for the Assessment Year 2014-15 confirming the notice under Section 148 dated 31.03.2021 on the file of the 2nd respondent and quash the said impugned assessment order dated 30.03.2022.

For Petitioner : Mr.G.Asokpathy
for M/s.PASS ASSOCIATES

For Respondents : Ms.S.Premalatha,
Junior Standing Counsel

ORDER

In this writ petition, the petitioner has challenged the impugned Assessment Order dated 30.03.2022 passed by the 2nd respondent for the Assessment Year 2014-15. The impugned order was preceded by a Notice dated 31.03.2021 under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as "IT Act") issued by the 1st respondent.

2. Reasons recorded in the aforesaid Notice dated 31.03.2021 issued by the 1st respondent for reopening the assessment under Section 147 of the IT Act are as follows:

> *"The assessee company filed the return of income for the A.Y. 14-15 on 27.11.14 admitting loss of Rs.10,31,111/-. Later, the case was selected for scrutiny and the assessment was completed u/s.143(3) on 30.12.16 assessing income of Rs.7,46,982/-.*
>
> *It is seen from the computation statement of income, the assessee has offered LTCG of Rs.48,76,82,009/-. From the details furnished, it is seen, the assessee has received Rs.53 Crores as sale consideration on sale of land, after cost indexation has offered the LTCG.*
>
> *However, as seen from the Profit & Loss a/c, the assessee has not credited the amount of sale consideration received as profit on sale of*

asset, but the same has been directly taken and credited in the computation statement and the Long Term Capital Gain was adjusted against the business loss for the year.

In this connection, it is pointed out that, as per the books, the assessee has arrived at a book loss of Rs.49,35,03,814/-. If the amount of Rs.53 Crores received as sale consideration was credited in the books, then the book loss returned by the assessee would turn into book profit of Rs.3,64,96,186/- (Book loss (-) 49,35,03,814 + Sale of Asset Rs.53,00,00,000). The book profit so arrived will be taxable as per provisions of Sec.115JB of the IT Act, resulting in tax demand of Rs.73,02,065/-.

Since, the taxable payable under Sec.115JB is more, the assessee is liable to pay additional demand of Rs.71,15,895/- (MAT tax 73,02,065 143(3) demand 1,86,170).

ACIT may consider this."

3. The learned counsel for the petitioner submitted that the petitioner company was a Private Limited Company. However, later, it was converted as Limited Liability Partnership (LLP) Firm w.e.f. 03.03.2020 which was also intimated to the Department. Despite the same, the impugned Assessment Order has been passed in the name of V T IMPEX LIMITED (former name of petitioner company). Hence, it is submitted that the impugned Assessment Order passed by the 2nd respondent is liable to be interfered in the light of the decision rendered by the Honourable Supreme Court in the case of ***Principal Commissioner of Income Tax, New Delhi Vs. Maruti Suzuki India Ltd.*** *(2019) 107 taxmann.com 375 (SC).*

3.1. It is submitted that the Notice dated 31.03.2021 was uploaded in the web portal by the 1st respondent by invoking the extended time limit of 6 years under the proviso to Section 147 of the Act.

3.2. It is submitted that the Notice dated 31.03.2021 was not served on the petitioner through e-mail or post. Subsequently, Notices dated 15.12.2021, 31.01.2022 & 14.02.2022 under Section 142(1) of the Act were uploaded by the 2nd respondent.

3.3. It is submitted that on 21.02.2022, the 2nd respondent had uploaded a Notice under Section 144 of the IT Act, to which, the petitioner company filed its Objections on 08.03.2022.

3.4. It is submitted that the 2nd respondent vide Speaking Order dated 19.03.2022, disposed of the petitioner's objections justifying the reasons for reopening of the assessment.

3.5. Thereafter, the 2nd respondent had issued a Show Cause Notice and Draft Assessment Order on 20.03.2022. Finally, on 30.03.2022, the 2nd respondent has passed the impugned Assessment Order confirming the Notice dated 31.03.2021.

3.6. The learned counsel for the petitioner submitted that the impugned Assessment Order is in gross violation of the principles of natural justice since the Notice dated 31.03.2021 issued under Section 148 of the IT Act by the 1st respondent was not communicated to the petitioner and thereby, the petitioner was denied the opportunity to challenge the proceedings. Therefore, the impugned Assessment Order dated 30.03.2022 passed by the 2nd respondent is liable to be set aside.

3.7. It is submitted that as per the decision of the Hon'ble Supreme Court in ***GKN Driveshafts (India) Ltd. Vs. Income Tax Officer & Ors.*** *(2003) 259 ITR 19 (SC)*, the petitioner was entitled to be furnished with Speaking Order, however, the petitioner has not been furnished with the Speaking Order, thereby, denying the petitioner's right to challenge the proceedings.

3.8. That apart, the learned counsel for the petitioner submitted that an Audit Objection was raised with regard to calculation of Book Profits of the said company, to which, the petitioner had filed its reply vide Letter dated 21.02.2019. Thereafter, the Audit Objection was put to rest and hence, it was assumed that the Department had accepted the explanation given by the petitioner.

4. Defending the impugned Assessment Order, the learned Junior Standing Counsel for the respondents drew the attention of this Court to Paragraph No.12 of the counter affidavit, wherein, it has been stated as follows:

> *"12. In respect of ground No.4 of affidavit, it is submitted that the issue for which case was re-opened was never the subject of examination during original scrutiny proceedings. During original scrutiny, no details in connection with computation of book profit was examined and not furnished by the assessee.*
>
> *In this case, the assessee has not disclosed the sale of land for consideration of Rs.53 Crore in Profit & Loss account and hence, the book profit, which indicates that the petitioner had not truly and fully disclosed the material facts. This non-disclosure of sale of land in P & L account impacted the computation of book profit to the extent of Rs.3,64,96,186/-.*
>
> *Further, assessee's contention that it is again a revisit and change in opinion is not found to be acceptable. The issue of computation of MAT income has not been examined during the course of original assessment proceedings. Therefore, there is no change in opinion.*

Further, reliance is placed on the decision of Hon'ble High Court of Calcutta in the case of PCIT Vs. ITC Limited (2024) 163 taxmann.com 294 (Calcutta) dated 21.05.2024, wherein, it was held that, "Where Assessing Officer while passing original assessment order under Section 143(3) was totally silent on liability of assessee to tax under Section 115JB and he neither noticed provisions of section 115JB nor formed any opinion with regard to liability to tax of assessee on book profit, assessment order was non-speaking and cryptic and therefore, reassessment proceedings initiated by Assessing Officer under Section 147 was not based on change of opinion" Held, yes – Whether, therefore, impugned order passed by Tribunal was unsustainable in law – Held, yes [Para 18] [In favour of revenue]."

4.1. That apart, learned Junior Standing Counsel for the respondents submitted that prior to the initiation of re-assessment proceedings, the petitioner has not filed any letter with the Department informing about the conversion of their company from Private Limited to Limited Liability Partnership.

5. In reply, the learned counsel for the petitioner submitted that the returns filed subsequently by the petitioner were in the name of Limited Liability Partnership. Hence, there is no case made out for sustaining the demand in the former name of petitioner company. He further submitted that on 24.10.2018, nomination was also given regarding the change of its e-mail ID.

6. Heard the learned counsel on either side and perused the materials available on record.

7. The petitioner company had earlier filed its Return of Income for the Assessment Year 2014-15 on 27.11.2014, declaring loss of Rs.10,31,111/-.

8. It is to be noted that in the Profit & Loss Account, the petitioner has not disclosed the amount of Rs.53 Crores which was received from the sale of land as profit on sale of asset. Instead, the petitioner had directly credited the said amount of sale consideration in the computation statement.

9. It is also to be noted that the Long Term Capital Gain was adjusted against the business loss for the year. If this aspect was noticed by the Assessing Officer before passing the Assessment Order, the Audit Objection itself would not emanated after 30.12.2016. The Income Tax Officer, Corporate Ward – 3 (4), Chennai had passed an Assessment Order dated 30.12.2016 under Section 143(3) of the IT Act, assessing the income

of the petitioner company as Rs.7,46,982/-. The assessment that was completed on 30.12.2016 would have been based on the wrong entry made by the petitioner in the Profit & Loss Account.

10. It is clear that the petitioner company which has now been converted as Limited Liability Partnership (LLP) Firm had failed to truly and fully disclose the material evidence required for completing the assessment resulting in income escaping assessment.

11. The submission made by the learned counsel for the petitioner that there has been a violation of the principles of natural justice since the Notice dated 31.03.2021 was not communicated to the petitioner and thereby, the petitioner was denied the opportunity to challenge the initiation of the proceedings cannot be countenanced because the Notice dated 31.03.2021 was transmitted as per the requirements of Section 282 of the IT Act r/w. relevant notification issued in this regard.

12. In any event, the petitioner was issued with Notice and Draft Assessment Order dated 20.03.2022 and therefore, it cannot be said that

there was a violation of the principles of natural justice. As far as, the applicability of the decision of the Hon'ble Supreme Court in ***Principal Commissioner of Income Tax, New Delhi Vs. Maruti Suzuki India Ltd.*** *(2019) 107 taxmann.com 375 (SC)* is concerned, it is not relevant to the case on hand as the said decision dealt with amalgamation of two companies where the notice was issued in the name of transferor company which ceased to exist, but, in the present case, the petitioner company has merely altered its status from Private Limited to Limited Liability Partnership (LLP) Firm.

13. The decision of the Hon'ble Supreme Court in ***Principal Commissioner of Income Tax, New Delhi Vs. Maruti Suzuki India Ltd.*** *(2019) 107 taxmann.com 375 (SC)* has been watered down in Principal Commissioner of Income Tax (Central) Vs. Mahagun Realtors (P) Ltd. *(2022) SCC Online SC 407.*

14. Considering the above facts and circumstances of the case and having regard to the submissions made by the learned counsel on their side, it has to be held that there is no merit in the challenge to the impugned order

under Article 226 of the Constitution of India, particularly, in view of the reasons stated by the Department for re-opening the assessment. Hence, this writ petition is liable to be dismissed.

15. Accordingly, this Writ Petition is dismissed. However, liberty is granted to the petitioner to challenge the impugned Assessment Order dated 30.03.2022 by way of an appeal before the Appellate Commissioner, within a period of 30 days from the date of receipt of a copy of this order.

16. On filing of such appeal by the petitioner, the Appellate Commissioner shall dispose of the same on merits without getting influenced by any of the observations made in this order, as expeditiously as possible. If no such appeal is filed by the petitioner within such time, it is open for the respondents to proceed against the petitioner in the manner known to law. No costs. Consequently, connected miscellaneous petitions are closed.

20.12.2024

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Index : Yes/No
Speaking Order (or) Non-Speaking Order

To

1.Deputy Commissioner of Income Tax,
Corporate Circle 3(1),
121, Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 106.

2.National Faceless Assessment Centre,
Mayur Bhawan, Connaught Lane,
Barakhamba,
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C.SARAVANAN, J.

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