IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2024

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.12627 of 2022
and W.M.P.No.12076 and 12077 of 2022

K.P.Construction,
Represented by its Managing Partner,
Mrs.J.Shanthi,
Wife of Mr.P.Janakar
Aged 55 years,
No.19/10, F2 Rangarajapuram,
4th Street, Saidapet, Chennai – 600 015.
Now address changed to:
51/3, Spencer Compound,
Dindigul – 624 001.

... Petitioner

Vs.

1.The Deputy Commissioner of Income Tax,
Central Circle – 1(2),
3rd Floor, Investigation Building,
No.46 (Old No.108) Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034.

2.The Principal Commissioner of Income Tax
(Central -1), Chennai,
3rd Floor, Investigation Building,
No.46 (Old No.108) Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records in DIN & Order No:ITBA/AST/S/147/2021-22/1042392742(1) dated 31.03.2022 on the file of the 1st respondent relating to the A.Y.2015-16 and quash the same.

For Petitioner : Mr.L.Dinesh

For Respondents : Mr.A.P.Srinivas
Senior Standing Counsel
and
Mr.A.N.R.Jayaprathap
Junior Standing Counsel

ORDER

The petitioner is before this Court against the impugned **Assessment Order** dated **31.03.2022** passed for the Assessment Year 2015-2016.

2. The petitioner had earlier filed a return of income on **30.08.2016** for the Assessment Year 2015-2016. It culminated in an Assessment Order dated **28.12.2017** under Section 143(3) of the Income Tax Act, 1961.

3. Thereafter, in pursuance of a search conducted at the premises of one P.Janakar on **10.05.2016**, a notice dated 10.09.2018 was issued under Section 153C to the petitioner. The aforesaid notice dated 10.09.2018 culminated in an Assessment Order dated **31.12.2018** under Section 153C read with Section 143(3) of the Income Tax Act, 1961, whereby, the payment made to sundry creditor for a sum of Rs.5,29,52,166/- was dis-allowed.

4. The petitioner filed an appeal against the aforesaid Assessment Order dated 31.12.2018 which has ultimately culminated in an order dated **31.08.2021** of the Appellate (Commissioner).

5. The Assessing Officer vide Letter dated **01.07.2021**, submitted a Remand Report forwarded by the Additional Commissioner of Income Tax, Central Range-1, Chennai vide Letter dated 06.07.2021. The Additional Commissioner of Income Tax has stated as follows:

> *"Accordingly, it is seen that out of a balance outstanding Sundry Trade Creditors of Rs.5,29,52,166/- as on 31.03.2014, a sum of Rs.5,22,27,091/- has been confirmed by various Creditors. The difference in confirmation pertains to two trade creditors,*

Shri.P.Tharmaraj and M/s.Motherland marbles, where the unconfirmed credit balances amounts to Rs.2,36,850/- and Rs.4,88,195/- respectively, and the additions made to such extent may please be confirmed.

In the case of Shri.P.Tharmaraj, the total transaction value itself was to the extent of Rs.4,87,250/- only, and therefore the claim of the credit value at Rs.7,24,100/- by the assessee is not correct. Similarly, M/s.Mother land Marbles vide their letter dated 03.12.2019 had confirmed that there was no transaction with M/s.KP Constructions during the Financial Year period 2014-2015.

In view of the foregoing discussions and in view of the facts of the case of the appellant as brought out on record by the findings of the Assessing Officer in his remand report, I am of the view that the appellant's claim to the extent of Rs.5,24,63,941/- is liable to be allowed. Thus, the AO is directed to limit the addition to the extent of unexplained credit of Rs.4,88,225/-. Accordingly, the appellant's grounds on this issue are partly allowed."

6. The above report was based on the information that was furnished by the petitioner pursuant to remand report called by the Appellate Commissioner from the Assessing Officer. It is therefore submitted that the impugned Assessment order is liable to be assailed.

7. It is the specific case of the petitioner is that the last date of issuance of notice within the period of four years expired on 31.03.2020, the last date of the Assessment Year 2015-2016 being 31.03.2016. It is submitted that under the extension under Taxable and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 [TOLA Act, 2020], the above notice that was issued on **30.03.2021** was not

saved under the TOLA Act, 2020. It is further that the said notice was issued without the satisfaction of the Additional Commissioner/Joint Commissioner for the purpose of Section 151(2) of the Act as defined in Section 2(28C) of the Act was therefore without jurisdiction.

8. In this connection, the learned counsel for the petitioner has drawn attention to the decision of the Delhi High Court and that of the Bombay High Court in the following two cases:-

(i)Commissioner of Income-tax Vs. SPL's Siddhartha Ltd [2012] 345 ITR 223 (Delhi) and
(ii)Commissioner of Income-tax, Central -4 Vs. Aquatic Remedies (P) Ltd [2018] 406 ITR 545 (Bombay)

9. It is submitted that since the approval of the Joint Commissioner or the Additional Commissioner as defined in Section 28C of the Income Tax Act, 1961 ought to have been obtained the approval/satisfaction of the Principal Commissioner of the Income Tax cannot be said to be compliance of the Section 151(2) of the Act.

10. The learned Senior Standing Counsel and the learned Junior Standing Counsel for the respondents drew attention to paragraph

Nos.5.1 and 5.2 of the counter affidavit. It was submitted that the petitioner had not truly and fully disclosed all the material facts that were required for completing the Assessment and therefore the impugned order does not merit any interference to quash the same.

11. The learned Senior Standing Counsel and the learned Junior Standing Counsel for the respondents would further submit that the notice that was issued on 30.03.2021 was not issued under sub-section 1 to Section 151. It is submitted that notice was issued beyond the period of four years and therefore, only approval of the Commissioner, Principal Commissioner, Commissioner etc., ought to have been obtained and therefore there is no merits in the objection based on the above two decisions of the Court.

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

13. The petitioner was issued with a Notice under Section 148 on 30.03.2021 by the Assessing Officer. It was after the expiry of four years from the end of Assessment Year 2015-2016 which expired on 31.03.2021. Section 151(1) of the Income Tax Act, 1961, as it stood till 31.03.2021 contemplates prior approval of the superior officer stipulated therein. Section 151 of the Income Tax Act, 1961 as it stood till **31.03.2021** on the date of issuance of Section 148 Notice on 31.03.2021 read differently from how it reads now.

14. Under Section 151(1) of the Income Tax Act, 1961, as it stood till 31.03.2021, no notice under Section 148 of the Income Tax Act, 1961 shall be issued by an Assessing Officer after expiry of four years from the end of the relevant Assessment Year, unless the Principal Chief Commissioner or the Chief Commissioner or the Principal Commissioner or the Commissioner was satisfied with the reasons recorded by the Assessing Officer that it is a fit case for issuance of Notice under Section 148 of the Act.

15. As per Section 151(2) of the Income Tax Act, 1961 as it stood prior to **01.04.2021**, applies to cases other than those fall under Sub-Section (1). Under Section 151(2) of the Income Tax Act, 1961, no notice shall be issued under Section 148 of the Act by an Assessing Officer who is below the rank of Joint Commissioner, unless the Joint Commissioner was satisfied with the reasons recorded by the Assessing Officer that it is a fit case for issuance of the Notice.

16. As per sub-clause 3, Section 151 of the Income Tax Act, 1961 as it stood prior to **01.04.2021**, for the purpose of sub-clause (1) & (2), if the Principal Commissioner or the Chief Commissioner or the Principal Commissioner or the Commissioner or the Joint Commissioner, as the case may be are satisfied with the reasons recorded by the Assessing Officer about the fitness of a case for issue of notice under Section 148 need not issue such notice himself.

17. In the Section 148 notice that was issued to the petitioner on 30.03.2021, it has been clearly stated that it was being issued after obtaining necessary satisfaction of the Principal Commissioner of

Income Tax (Central), Chennai – 1 implying that the requirement of Section 151(1) of the Income Tax Act, 1961 was complied with.

18. Section 148 notice dated 30.03.2021 issued under the old regime is deemed to have been issued within the period of limitation of four years under Section 151(2) of the Act, as it stood prior to 01.04.2021 in view of extensions under TOLA Act, 2020. Therefore, satisfaction of the Principal Commissioner of Income Tax (Central), Chennai – 1 was not required. It would have been sufficient, if the Joint Commissioner was satisfied.

19. At the same time, it is not open for the department to contend that the petitioner has not furnished all the details. The details were submitted during the Appellate proceedings pursuant to a remand report called by the Commissioner of Income Tax (Appeals) from the Assessing Officer, which was furnished by the Additional Commissioner.

20. In the remand report, the Assessing Officer has categorically concluded that the claim of the petitioner to the extent of

Rs.5,24,63,941/- was liable to be allowed, pursuant to which, the Appellate Commissioner passed the Appellate order dated 31.03.2021 against the Assessment order dated 31.12.2018 passed under Section 153C read with Section 143(3) of the Income Tax Act, 1961 by directing the Assessing Officer to limit the addition for the extent of unexplained credit of Rs.4,88,225/-. Although, the notice under Section 148 dated 30.03.2021, i.e., one day prior to Appellate Commissioner order dated 31.03.2021, the only option available to the Department was to invoke the machinery under Section 263 of the Act or way of an Statutory Appeal before the Tribunal and the Appellate Order dated 31.03.2021.

21. This Writ Petition stands allowed. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

13.12.2024

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

To

1.The Deputy Commissioner of Income Tax,
Central Circle – 1(2),
3rd Floor, Investigation Building,
No.46 (Old No.108) Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034.

2.The Principal Commissioner of Income Tax
(Central -1), Chennai,
3rd Floor, Investigation Building,
No.46 (Old No.108) Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034.

C.SARAVANAN, J.

jas

W.P.No.12627 of 2022
and W.M.P.No.12076 and 12077 of 2022

13.12.2024