IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **19.06.2024**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

Writ Petition No.15137 of 2024 and
W.M.P.Nos.16461, 16463 & 16464 of 2024

Devendran Coal International Private Limited,
Rep. by its Managing Director R. Rathnamala,
D/o. Rajavel, devendran House,
4A-5, Periyaswamy Road (East),
R.S. Puram, Coimbatore – 641 002. .. Petitioner

-vs-

1.Assessment Unit,
Income Tax Department,
National Faceless Assessment Centre,
4th floor, Mayur Bhawan,
Connaught lane, Connaught place,
New Delhi 110 001.

2.The Deputy Commissioner of Income Tax,
Corporate Circle -1, Coimbatore-Main Building,
63, Race Course Road, Coimbatore – 641 018.

3.The Principal Commissioner of Income Tax-1,
63, Race Course Road, Coimbatore – 641 018. ... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records in DIN ITBA/AST/S/147/2024-25/1064988862 (1) dated 19.05.2024 u/s. 147 read with Section 260 read with Section 144B of the Income Tax Act on the file of the 1st Respondent relating to AY.2017-18 and quash the same.

For Petitioner : Mr.Baskar G.

For Respondents : Dr.B.Ramaswamy, Senior Standing Counsel

ORDER

An assessment order dated 19.05.2024 in respect of assessment year 2017-2018 is challenged in this writ petition.

2. The petitioner filed the return of income for assessment year 2017-2018 on 27.10.2017. An assessment order under Section 143(3) of the Income Tax Act, 1961 (the Income Tax Act) was issued on 20.12.2019. Such assessment was reopened by issuing notice under Section 148 dated 31.03.2021. Such notice was followed by notices under Section 142(1) and the petitioner filed the return of income on 09.02.2022. An assessment order was issued thereafter on 30.03.2022. Such order was set aside by the order

dated 05.09.2023 in W.P.No.9420 of 2022 on the ground that a draft assessment order under Section 144B was not issued. The order impugned herein was issued thereafter.

3. Learned counsel for the petitioner submits that the reassessment was based on credits made through RTGS in the bank account of the petitioner in December 2016. As regards the first credit of Rs.91,50,000/-, he submits that the petitioner was under the impression that it was a payment from Sakthi Sugars Limited, which is one of the debtors of the petitioner. Upon realising that the remittance was not by Sakthi Sugars Limited, he submits that the amount was refunded to M/s. S R Paper Board on 24.03.2017. As regards the second credit from M/s.Vardhami by a NEFT transaction on 30.12.2016, he points out that the amount was paid to the Income Tax Department under demand draft dated 03.03.2020 for a sum of Rs.20,50,000/-. He also points out that this payment was made upon receipt of order dated 28.11.2019. Therefore, he points out that only two credits of sums of Rs.9,00,000/- each remain. In these circumstances, learned counsel submits that the impugned order is unsustainable in as much as the

aggregate value of all these credits of Rs.1,30,00,000/- was added to the income of the petitioner and tax was imposed on this basis. The next contention of learned counsel for the petitioner is that the notice under Section 148 was not received by the petitioner and that even before the introduction of Section 148A, it was necessary to follow the ratio of the judgment in *GKN Driveshafts vs. ITO (259 ITR 19) (GKN Driveshafts)*. By referring to the petitioner's reply dated 30.03.2022, learned counsel submits that the notice under Section 148 was not valid. The last contention is that the reasons set out for reopening the assessment are untenable in as much as it is recorded therein that the assessee had not filed the return of income. Because the reason for reopening the assessment is untenable, learned counsel contends that the impugned order cannot be sustained.

4. Dr.B.Ramaswamy, learned senior standing counsel, accepts notice for the respondents. He points out that principles of natural justice were fully complied with by issuing notice dated 31.03.2021 under Section 148 and multiple notices under Section 142(1). He also points out that show cause notice dated 27.03.2022 was issued indicating the proposed variations

and that the objections of the petitioner were duly considered before issuing the impugned assessment order. Consequently, he submits that no case is made out for interference under Article 226 of the Constitution of India.

5. The documents on record include the notice under Section 148, multiple notices under Section 142(1), the return of income filed by the petitioner in response to the notice under Section 148, the communication from the 1st respondent dated 17.03.2022 setting out the reasons for reopening the assessment, show cause notice dated 27.03.2022, the objections dated 30.03.2022 of the petitioner and the impugned assessment order. On examining the impugned assessment order, it is noticeable that the four credits relating to escaped assessment were recorded at internal pages 17 and 18 of such order. The petitioner's submissions dated 01.03.2024 in relation thereto were also taken into consideration. After taking note of the fact that the credit of Rs.91,50,000/- was refunded on 24.03.2017 and that the sum of Rs.20,50,000/- was paid to the Tax Department by demand draft dated 03.03.2020, the assessing officer recorded the finding that the assessee had not informed the Tax Department about the receipt of these

amounts until the case was reopened for assessment. It was also recorded that the assessee had not lodged any complaint regarding the receipt of such huge amounts or made any efforts to block RTGS from those parties.

6. On closely examining the impugned assessment order, it cannot be concluded that materials placed on record by the petitioner were not taken into consideration. Upon appraisal of such materials, findings were recorded by the assessing officer. On *prima facie* consideration of the material documents, it cannot be concluded that the appraisal of evidence was perverse. Any reappraisal of such evidence would be squarely within the province of the appellate forum.

7. As regards the objection that the notice under Section 148 of the Income Tax Act was not received, it is noticeable that multiple notices under Section 142(1) were issued thereafter and the reasons for reopening the assessment were communicated to the petitioner on 17.03.2022. In these circumstances, on the allegation that the procedure prescribed in *GKN Driveshafts* was not followed by the respondents, I am not inclined to

interfere with the impugned order. Therefore, this is not an appropriate case for exercising jurisdiction under Article 226.

8. The impugned assessment order was issued on 19.05.2024 and the affidavit in support of the writ petition was affirmed on 29.05.2024. In these circumstances, it is just and appropriate that the petitioner be permitted to prosecute a statutory appeal.

9. For reasons set out above, W.P.No.15137 of 2024 is disposed of without any order as to costs by permitting the petitioner to present a statutory appeal. If such appeal is presented within 15 days from the date of receipt of a copy of this order, the appellate authority is directed to receive and dispose of the same on merits without going into the question of limitation. Consequently, connected miscellaneous petitions are closed.

19.06.2024

Index : Yes / No
Internet : Yes / No
Neutral Citation: Yes / No
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SENTHILKUMAR RAMAMOORTHY,J

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To

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