IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2024

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THE HON'BLE **MR.JUSTICE C.SARAVANAN**

W.P.No.19451 of 2021
and
W.M.P.Nos.20756 and 20757 of 2021

Unitech Exhibition Private Limited,
Represented by its Managing Director,
No.14, 3rd Street, Sowdeswari Nagar,
Okkiyam Thoraipakkam,
Chennai – 600 097. ... Petitioner

Vs.

1. The Deputy Commissioner of Income Tax,
Corporate Circle – 3(1) CHE,
Room No.411, 4th Floor,
Chennai – Wanarpathy Block No.121,
Mahatma Gandhi Road, Nungambakkam,
Chennai – 600 034.

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

Prayer: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorari to call for the records in the impugned order DIN & Letter No.ITBA/AST/F/17/2021-22/1035278405(1) dated 03.09.2021 passed by the 2nd Respondent read with notice DIN & Notice No.ITBA/AST/S/148/2019-20/1026812092(1) dated 20.03.2020 and quash the same.

For Petitioner : Mr.T.Ramesh

For Respondents : Mr.V.Mahalingam
Senior Standing Counsel

ORDER

The Petitioner is before this Court against the Impugned Notice dated 20.03.2020 issued under Section 148 of the Income Tax Act, 1961 and the consequential Order dated 03.09.2021 passed by the 1st Respondent overruling the objection of the Petitioner against the reopening of the assessment that was earlier completed under Section 143(3) of the Income Tax Act, 1961 on 04.03.2016.

2. The Impugned Order and the notices are challenged primarily on the ground that the notice seeking to reopening of the assessment is after expiry of normal period of limitation that is four (4) years and that is inspired from change of opinion.

3. The learned counsel for the Petitioner has submitted that a detailed

Assessment Order was passed under Section 143(3) of the Income Tax Act, 1961 on 04.03.2016, wherein it is clearly recorded that all the informations that were called for by the Petitioner were furnished for completing the assessment.

4. It is submitted that the Petitioner was engaging in holding exhibitions and had sold business to M/s. International Trade and Exhibition India Pvt. Ltd by an agreement dated 02.05.2012 which accompanied another non-compete and non-solicitation agreement also dated 02.05.2012.

5. It is therefore submitted that the Impugned Notice and the Order disposing of the objection/overruling the objection of the Petitioner are liable to be interfered in the light of the decision of the Hon'ble Supreme Court in **Commissioner of Income Tax** vs**. Kelvinator of India Limited** (2010) 320 ITR 0561; (2010) 187 TAXMAN 0312.

6. On the other hand, the learned Senior Standing Counsel for the Respondent would submit that the Writ Petition is premature.

7. It is submitted that the Order has been passed in terms of the direction of the Hon'ble Supreme Court in **GKN Driveshafts (India) Limited Vs. Income Tax Officer and Ors** [2003] 259 ITR 19 (SC).

8. It is submitted that by issuing the notice the Respondent has merely reopened the assessment but have not made a final determination. It is further submitted that in fact an adverse Order is passed it is always open for the Petitioner to opt the issue before the Appellate Commissioner after Assessment Order passed under Section 143(3) read with 147 of the Income Tax Act, 1961. Hence, he prays for dismissal of the present Writ Petition.

9. Having considered the submissions made by the learned counsel for the Petitioner and the learned Senior Standing Counsel for the Respondent and having perused the documents filed before this Court, it is evident that the Petitioner had furnished all the documents required for completing the assessment under Section 143(3) of the Income Tax Act, 1961.

10. In the returns that was filed by the Petitioner on 15.09.2013, the Petitioner has disclosed the entire amount received under the aforesaid Agreement but claimed as capital gains instead of treating them as business

income. Since the assessment was completed after furnishing all the documents including the two mentioned agreement, it has to be construed that the Impugned Order is inspired from change of opinion and therefore, it has to be quashed in the light of the decision of the Hon'ble Supreme Court in **Commissioner of Income Tax** vs**. Kelvinator of India Limited** referred to *supra* and plethora of Judgments which are followed the views therein.

11. That apart, since the notice itself has been issued after expiry of four (4) years, the Department could have invoked Section 147 of the Income Tax Act, 1961, only if tangible materials were available and that there was failure on the part of the Petitioner to disclose materials/documents and informations which were required for completing the assessment under Section 143(3) of the Income Tax Act, 1961.

12. In the result, the Writ Petition stands allowed with the consequential relief. No cost. Consequently connected Miscellaneous Petitions are closed.

19.09.2024

Index : Yes/No
Speaking/Non-speaking Order
Neutral Citation :Yes/No
rgm

To

1. The Deputy Commissioner of Income Tax,
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   Room No.411, 4th Floor,
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C.SARAVANAN, J.

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