



WEB COPY



W.P. No.24396 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.02.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.24396 of 2021

and

W.M.P. Nos.25704 and 25705 of 2021

M/s.R.R.Donnelley India Outsource Private Limited,
Represented by its Authorised Signatory
Mr.Jyoti Prosad Bose,
43-A, Astron House First Main Road,
R.A.Puram, Chennai-600 028.

... Petitioner

Vs.

1. Assistant Commissioner of Income Tax,
Large Taxpayer Unit-Circle 1,
121, Mahatma Gandhi Salai,
Nungambakkam, Chennai-600 034.

2. Principal Commissioner of Income Tax-5,
121, Mahatma Gandhi Salai,
Nungambakkam, Chennai-600 034.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records on the file of the 1st Respondent and quash the impugned order in DIN and Letter No:ITBA/COM/F/17/2021-22/1036199837(1) dated 06.10.2021 along with the notice under Section 148 of the Income Tax Act in PAN AABCH1990A in notice number ITBA/AST/S/148/2017-18/1009502597(1) dated 28.03.2018 for the assessment year 2011-12.



WEB COPY



W.P. No.24396 of 2021

For Petitioner : Ms.N.V.Lakshmi

For Respondents : Mr.Rajasekar
Standing Counsel

ORDER

The present writ petition is filed challenging the impugned order of assessment under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) on the premise that the power of reassessment is sought to be invoked on mere change of opinion / review which is impermissible.

2. The petitioner submitted a return of income returning a total income of Rs.15.99 Crores. In the said return of income it is submitted that the petitioner claimed deduction under Section 10B of the Act to the extent of Rs.7.95 Crores. During the course of the original assessment the petitioner while claiming deduction under Section 10B, alternatively submitted that it was entitled to the deduction under Section 10A of the Act. On consideration of the above explanation the deduction under Section 10A was accepted in the order of assessment. With regard to the interest element



W.P. No.24396 of 2021

the petitioner would submit that they were operating from a rented premises and the electricity connection was in the name of the owner of the premises.

The owner maintained certain deposits with Tamil Nadu Generation and Distribution Corporation Private Limited (TANGEDCO) and obtained interest on the said deposits. However, TANGEDCO while issuing the tax certificates in the name of the owner of the premises inadvertently referred to the PAN No. of the petitioner and the tax deducted by TANGEDCO on the payments made to the owner of the premises was wrongly reflected in the Form 26A of the petitioner. The owner of the premises had written to TANGEDCO to make the necessary corrections. The income appears in the Form 26AS of the petitioner only due to the above inadvertent mismatch. The above information was available with the 1st Respondent during the course of the original assessment. As a matter of fact the 1st Respondent vide its notice under Section 142(1) of the Act, sought for reconciliation of Form 26AS which was furnished by the petitioner vide letter dated 25.02.2015. The assessment is made after perusal of the details submitted by the petitioner. In other words the 1st Respondent allowed the alternate claim of deduction under Section 10 A of the Act and did not make any



W.P. No.24396 of 2021

adjustment based on the credit of interest reflected in Form 26AS after enquiring and examining documents relating to the above issues. In this regard it may be relevant to refer to the relevant portion of the notice under Section 142(1) dated 25.07.2013, reply of the petitioner dated 24.02.2015 and 18.03.2015 and order of the 1st Respondent dated 30.03.2015:

Notice under Section 142(1) dated 25.07.2013:

“28. Reconciliation below amount credited to you as per 26AS and amount credited in your P & LA/c.”

Reply of the petitioner dated 24.02.2015:

“4. Reconciliation of Income as per financials and form 26AS

Reconciliation of Income as per financials and form 26AS for the subject AY is provided as Annexure 3”

Reply of the petitioner dated 18.03.2015:

“5. Alternate Claim of deduction under Section 10A of the Act:

Without prejudice to our contention that the Company is eligible to claim deduction under Section 10B of the Act. We also wish to make an alternate claim that if the submission of the assessee are not considered favorably and deduction under Section 10B of the Act is not being granted to the Company. In this regard the Company is also submitting form 56F as required for claiming deduction under Section 10A of the Act.”



W.P. No.24396 of 2021

Order of the 1st respondent dated 30.03.2015:

Deduction under Section 10B/10A:

“The assessee in the return of income claimed deduction under Section 10B of the extend of Rs.7,95,59,011/-. During the course of assessment proceedings, an alternate claim under Section 10 A was made by filing form 56F.”

Order of the 1st respondent dated 30.03.2015:

“The submission of the assessee for alternate claim of deduction under Section 10A has been carefully considered. The Hon'ble Delhi High Court in the case of Valiant Communication Pvt Ltd in ITA No.2002/2010 in C.M.P.No.12/2013 and the Jurisdictional High Court in the case of Heart Land KG information Pvt Ltd in TC(A) No.625/2009 dated 19.08.2013 have held that if the assessee is not eligible to claim deduction under Section 10B, then the alternate claim under Section 10A is to be considered. Accordingly, the claim of the assessee is considered for deduction under Section 10A. However, the profits of the eligible unit is considered at Rs.6,72,34,625/- as duly certified by a qualified Chartered Accountant and which has been arrived at on the basis of accounts and records of the assessee.”

2.1. The above extracts would show that both the above issues viz., alternate claim of deduction under 10A and discrepancy in Form 26AS with regard to interest, was the subject matter of a conscious consideration even during the course of the original assessment dated 30.03.2015.

2.2. Whiles, the Deputy Commissioner of Income-tax, Corporate Circle 5(2) Chennai ['DCIT Corporate Circle 5(2)'] issued the notice under Section 148 of the Act for AY 2011-12 dated 28.03.2018, alleging that



income has escaped assessment. The petitioner filed a return of income in response to the notice and sought for reasons for reopening the assessment.

The DCIT Corporate Circle 5(2) furnished the following reasons :

Reasons recorded by the 1st respondent for reopening dated 13.11.2018:

With reference to the above, the reasons for reopening the assessment under Section 147 of the I.T.Act, 1961 for the assessment year 2011-12 is furnished as under:

“As per Form 26AS, interest received by the assessee during the year is Rs.2,17,52,276/-. The assessee however, has shown only a sum of Rs.2,13,28,238/- as interest in its books, leaving a difference of Rs.4,24,038/-. Out of this, a sum of Rs.2,82,717/- is out of interest on margin money deposit. However, the balance sum of Rs.1,41,321/- remains unexplained. The assessee would very well know of the total receipts as per 26AS. Despite this, the assessee has not disclosed this difference in its return.

It has also come to light that the assessee has made an incorrect claim under Section 10B of the Income Tax Act without having the necessary approvals. The assessee has later claimed deduction under Section 10A of the Income Tax Act without filing a fresh return. This is not allowable as per the Supreme Court decision in the case of Goetze India v. CIT 2006 284 ITS 323 SC.

Therefore, it is clear that the assessee company has failed to disclosed fully and truly all material facts necessary for its assessment by not disclosing the correct interest receipts as well as by claiming an Incorrect deduction.

Based on the discussion above, I have reasons to believe that interest income to the tune of Rs.1,41,321/- and incorrect deduction to the tune of Rs.6,58,237/- is the income that has escaped assessment and that it is a fit case for issuance of notice under Section 148 of the Income Tax Act”

2.3. The above notice was objected to by the petitioner vide its reply dated 28.11.2008 inter-alia highlighting the fact that the reasons for



W.P. No.24396 of 2021

reassessment forms part of the record of the assessment under Section 143(3) and that there was no failure on the part of the assessee to furnish material facts necessary for the assessment under Section 143(3) and importantly reassessment is sought to be invoked without any new material on the basis of mere change of opinion which cannot be sustained. The above objections were disposed of by the Respondent vide order dated 03.12.2018 that though details were produced and the claims allowed during the original assessment under Section 143(3) that cannot be a factor to hold that reassessment is impermissible and proceeded to reject the objection. The above order dated 03.12.2018 along with the notice under Section 148 of the Act dated 28.03.2018 was challenged on the premise that the objections were not considered and the order of rejection was not a speaking order in W.P.No.33960 of 2018. This Court was pleased to quash the order dated 03.12.2018 and remanded the matter back to the 1st Respondent for fresh consideration.

3. Pursuant thereto the petitioner submitted a letter dated 05.10.2021 reiterating its objection reopening the assessment. The above objection was



rejected vide impugned order dated 06.10.2021. The present writ petition is filed challenging the above order primarily on the ground that both the issues viz., both the above issues viz., alternate claim of deduction under 10A and discrepancy in Form 26AS with regard to interest, was the subject matter of a conscious consideration even during the course of the original assessment dated 30.03.2015. It is trite law that reassessment cannot be made on the basis of change of opinion without new tangible material. In this regard, it may be relevant to refer to the following judgments:

i) Commissioner of Income-Tax v. A.V. Thomas Exports Ltd., (2008) 296 ITR 603 :

"6. The Tribunal has applied the correct principle of law and held as follows:

"But whether recourse to section 147 could be made beyond four years is the real question in the present appeal. Circumstances for extending limitation beyond four years do not exist in the facts of the present case. As such on the ground of limitation assumption of jurisdiction under section 147 is bad. In the case of CIT v. Foramer France, [2003] 264 ITR 566 (SC), it was held that if there is no failure to file return or to disclose fully and truly all material facts, issuance of notice beyond the period of four years is barred by limitation. In the case of CIT v. Annamalai Finance Ltd., [2005] 275 ITR 451 (Mad) it was held that section 147 of the Act does not postulate conferment of power upon the Assessing Officer to initiate reassessment proceedings upon a mere change of opinion. It is incumbent on the Assessing Officer to prove that there was a failure to disclose material facts necessary for the assessment for the issuance of notice beyond the period of four years."

(emphasis supplied)



WEB COPY



W.P. No.24396 of 2021

ii) CIT v. Techspan India (P) Ltd., (2018) 6 SCC 685 :

“19.The fact in controversy in this case is with regard to the deduction under Section 10-A of the IT Act which was allegedly allowed in excess. The show-cause notice dated 10-2-2005 reflects the ground for reassessment in the present case, that is, the deduction allowed in excess under Section 10-A and, therefore, the income has escaped assessment to the tune of Rs 57,36,811. In the order in question dated 17-8-2005,..... Even the said show-cause notice suggested how proportional allocation should be done. All these things leads to an unavoidable conclusion that the question as to how and to what extent deduction should be allowed under Section 10-A of the IT Act was well considered in the original assessment proceedings itself. Hence, initiation of the reassessment proceedings under Section 147 by issuing a notice under Section 148 merely because of the fact that now the assessing officer is of the view that the deduction under Section 10-A was allowed in excess, was based on nothing but a change of opinion on the same facts and circumstances which were already in his knowledge even during the original assessment proceedings.”

(emphasis supplied)

iii) Woodward Governor India Ltd. v. Assistant Commissioner of Income-Tax, 2016 SCC OnLine Del 6632:

“2..... It is urged that the two heads of income sought to be passed off as deductions and clubbed with the receipts that are legitimately admissible under section 80-IA, are contrary to the declaration of law by the Supreme Court in Pandian Chemicals Ltd. v. CIT,[2003] 262 ITR 278 (SC) and Liberty India v. CIT,[2009] 317 ITR 218 (SC).

.....

4. It is evident from a plain reading of the reasons furnished by the Revenue that there is no allusion to tangible material in the form of objective documents, information etc., outside of the concluded assessment and the documents pertaining to it. According



WEB COPY



W.P. No.24396 of 2021

to the binding ruling of the Supreme Court in CIT v. Kelvinator of India Ltd., [2010] 320 ITR 561 (SC), sans such documents, evidence or tangible material, there cannot be valid opinion leading to proper reassessment proceedings.”

(emphasis supplied)

iv) Great Eastern Energy Corporation Ltd. v. Income Tax, 2014 SCC OnLine Del 3856:

“6. Thus, according to the AO, income is stated to have escaped assessment on four counts. The first being on account of depreciation claimed on computer software. In this respect, it is noted that the returns furnished by the assessee had been duly scrutinized by the AO. Undeniably, the amount of depreciation claimed by the assessee was examined by the AO. This is also apparent from the fact that the AO had disallowed depreciation to the extent of Rs. 5,85,078/-, which was claimed by the assessee in respect of the building and warehouse. The AO has now alleged that the depreciation on computer software was to be allowed only to the extent of 25% instead of 60% as admitted earlier.Be that as it may, it is apparent that the dispute raised with regard to rate of depreciation by the AO merely indicates a change of opinion and there has been no failure on the part of the assessee to disclose any material fact in this regard.

10..... It is now well settled that assessment cannot be reopened on mere change of opinion. The Hon'ble Supreme Court in the case of CITv.Kelvinator of India Limited: (2010) 320 ITR 561 (SC) affirmed the decision of the full Bench of this Court that a mere change of opinion cannot form the basis for reopening of assessment.”

4. On a perusal of the original assessment and the reasons recorded for reopening and the impugned order of rejection of the petitioner's



W.P. No.24396 of 2021

objection leaves no room for any doubt that the subject matter for reassessment was also the subject matter for original assessment and the reassessment is initiated on mere change of opinion without any new tangible material thereby vitiating the entire proceeding as bad for want of jurisdiction.

5.The impugned order is set aside. The writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

28.02.2024

Speaking (or) Non Speaking Order
Index : Yes/ No
Neutral Citation: Yes/No
mka



WEB COPY



W.P. No.24396 of 2021

MOHAMMED SHAFFIQ, J.

mka

To:

1. Assistant Commissioner of Income Tax,
Large Taxpayer Unit-Circle 1,
121, Mahatma Gandhi Salai,
Nungambakkam, Chennai-600 034.
2. Principal Commissioner of Income Tax-5,
121, Mahatma Gandhi Salai,
Nungambakkam, Chennai-600 034.

W.P. No.24396 of 2021

and

W.M.P. Nos.25704 and 25705 of 2021

28.02.2024