IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2025

CORAM

THE HON'BLE MR.K.R.SHRIRAM, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE SUNDER MOHAN

W.A.No.2444 of 2021
and C.M.P.No.15666 of 2021

M/s.Vestas Wind Technology India
Pvt. Ltd., A Private Limited Company,
Incorporated under the provision of the
Indian Companies Act, 1956,
Rep. by its Director-Finance,
Mr.Govindaraj Kolappan,
No.298, Old Mahabalipuram Road,
Sholinganallur, Chennai 600 119. .. Appellant

-vs-

The Assistant Commissioner of
Income Tax, Company Circle III(4),
121, Mahatma Gandhi Road,
Nungambakkam, Chennai 600 034. .. Respondent

Prayer: Appeal filed under Clause 15 of the Letters Patent against the order dated 05.08.2021 passed in W.P.No.3847 of 2014 on the file of this Court.

For Appellant	:	Mr.Raghav Menon
For Respondent	:	Mr.V.Mahalingam Sr. Standing Counsel

* * * * *

JUDGMENT

(Judgment of the Court was delivered by the Hon'ble Chief Justice)

The appeal impugns an order and judgment dated 05.08.2021 passed by a learned Single Judge of this Court dismissing a writ petition that assessee/appellant had filed challenging a notice dated 25.03.2013 that was issued under Section 148 of the Income Tax Act, 1961 (in short 'the Act').

2. Assessee, which is in the business of manufacture and service of wind technology, had filed its return of income on 29.10.2007 for Assessment Year 2007-08 declaring a total income of Rs.227,96,81,689/-. Revised return of income was filed admitting a total income of Rs.223,75,49,786/-. Return was initially processed on 17.03.2009 under Section 143(1) of the Act and thereafter, was selected for scrutiny. A notice dated 24.09.2010 was issued under Section 143(2) of the Act calling for various details. All details were furnished and finally, an assessment order dated 29.12.2010 was passed under Section 143(3) of the Act.

3. Subsequently, the impugned notice dated 25.03.2013 was issued. Assessee was also given reasons to believe, objections were filed and objections were rejected. Assessee challenged the same by way of a writ petition, which came to be dismissed by an order pronounced on 05.08.2021. It is that order that is challenged before us.

4. Mr.Raghav Menon submitted that the notice under Section 148 of the Act was issued more than four years after the relevant assessment year. As provided by the proviso to Section 147 of the Act, the assessment done under Section 143(3) of the Act could be reopened only if there was a failure on the part of assessee to truly and fully disclose material facts required for the assessment for the relevant assessment year. Counsel submitted that there is not even a whisper in the reasons to believe that there was any such failure.

5. Per contra, Sri.Mahalingam, submitted that production before the Assessing Officer of account books or other evidence from which material evidence could, with due diligence, have been discovered by the Assessing

Officer will not necessarily amount to disclosure within the meaning of the proviso to Section 147.

6. Assessee had received a letter dated 10.09.2013, which reads as under:

> *"On perusal of records maintained in this office it is seen that the commission paid by M/s.Vestas Wind Technology India Pvt. Ltd. to M/s.Tuticorin Trexim Pvt. Ltd. needs examination in the light of facts gathered. Hence, the assessment for the A.Y.2006-07 in the case of the assessee company has been reopened u/s.148.*
>
> *In view of the above, you are required to attend my office at the above mentioned address on 17.09.2013 at 03.00 P.M."*

This was followed by another letter dated 18.09.2013 from the same Assessing Officer which provided as under:

> *"In our above referred letter, by oversight, the assessment year has been wrongly mentioned as 2006-07 and in addition to the reason mentioned, the following reason for reopening assessment has been left out to be added:*
>
> *"On perusal of records, from the Schedule 17, Notes on accounts forming part of Balance Sheet vide para No.3.5, CIF value of expenditure in foreign currency, an amount of Rs.32.87 Crores has been shown as License Fees. Further, vide para No.13(d), list of transactions with related parties, it has been stated that the license fees of Rs.32,87,96,000/- has been paid to the holding company. Further, as seen from the Annexure B to Form No.3CEB, details of transactions with*

> *associated enterprises, it is seen that the payment of license fees has been made to M/s.NEG Micon, Denmark, the 100% holding company. The payment of license fees to its holding company attracts TDS u/s.195 and non deduction of TDS would attract provisions of Sec.40(a)(i)."*

7. At the outset, we need to note that the fact that two such communications were sent reflects non-application of mind, when the decision to reopen was made and, the first letter dated 10.09.2013 was issued. Otherwise, the second letter dated 18.09.2013 would not have been required to be issued.

8. Moreover, both letters indicate "*on perusal of records...*". In fact, the second letter says "*On perusal of records, from the Schedule 17, Notes on accounts forming part of balance sheet vide para No.3.5,... Further, vide para No.13(d)... Further, as seen from the Annexure B to Form No.3CEB ...*". All these indicate that there was no failure to disclose any material facts. The so-called reason to believe escapement of income is based on documents and records filed by assessee. Therefore, the reopening notice does not pass muster as per the proviso to Section 147 of the Act.

Therefore, the impugned order is quashed. Both the notices dated 25.03.2013 and 27.11.2013 are also quashed and set aside. So also, the consequential orders are quashed and set aside. Appeal is allowed. There shall be no order as to costs. Consequently, the interim application stands closed.

(K.R.SHRIRAM, CJ.) **(SUNDER MOHAN, J.)**
19.06.2025

Index : Yes
Neutral Citation : Yes

sra

To

The Assistant Commissioner of
Income Tax, Company Circle III(4),
121, Mahatma Gandhi Road,
Nungambakkam, Chennai 600 034.

The Hon'ble Chief Justice
and
Sunder Mohan, J.

(sra)

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