



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 31.01.2012

CORAM:

THE HONOURABLE MR.JUSTICE N.PAUL VASANTHAKUMAR
AND

THE HONOURABLE MR.JUSTICE P.DEVADASS

W.A.(MD).Nos.1630 and 1631 of 2011

Joint Commissioner of Income-Tax,
Company Circle I, Madurai,
2, V.P.Rathinasamy Road, Madurai 625 002.

: Appellant in W.A.(MD).No.1630 of 2011

Assistant Commissioner of Income-tax,
Company Circle I, Virudhunagar.

: Appellant in W.A.(MD).No.1631 of 2011

Vs.

Thiagarajar Mills (P) Ltd.,
Kappalur, Madurai.

: Respondent in W.A.(MD).No.1630 of 2011

VTM Limited (Formerly Virudhunagar Textiles Limited),
Sulakarai, Virudhunagar 626 003. : Respondent in W.A.(MD).No.1631 of 2011

PRAYER: Appeals are filed under Clause 15 of the Letters Patent Act against the Judgment dated 28.09.2010 made in W.P.(MD)Nos.1938 of 2009 and W.P.(MD).No.10867 of 2010.

PRAYER IN W.P.(MD)Nos.1938 of 2009 Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records in the matter of re-assessment of the petitioner in file No.AAACT4304R for the assessment year 2000-2001 wherein a notice dated 31.3.2006 under Section 148 of the Income Tax Act, 1961, has been issued without jurisdiction and in pursuance thereof a reassessment has been made on 7.3.2009 and quash both the notice and consequential reassessment as not valid and quash the same.

(Prayer amended as per order of this Court dated 22.4.2010 made in M.P.Nos.1 and 2 of 2010 in W.P.Nos.1938 and 1939 of 2009).

PRAYER IN W.P.(MD).No.10867 of 2010. Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records in the matter of reopening of the assessment of the petitioner in file No.C.No.AAACV3775E for the assessment year 2001-02 quash the notice issued under Section 148 of the Income Tax Act, 1961, dated 27.3.2008 without jurisdiction and also the order dated 29.7.2010 rejecting the objections of the petitioner unjustly and irrelevant grounds.



For Appellants : Mrs.S.Srimathy For Mr.R.Sathiamorthy

For Respondents: Mr.R.Srinivasan, Additional Public Prosecutor

COMMON JUDGMENT

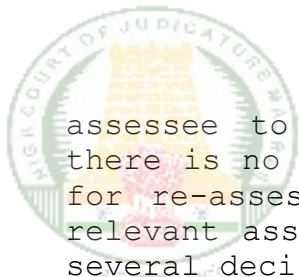
[Judgment of the Court was delivered by N.PAUL VASANTHAKUMAR, J.]

These Writ Appeals are filed challenging the order dated 28.09.2010 made in W.P.(MD)Nos.1938 of 2009 and W.P.(MD).No.10867 of 2010, wherein notices dated 31.03.2006 and 27.03.2008 respectively issued by the appellants herein under Section 148 of the Income Tax Act, 1961, [hereinafter referred to as "the Act"], were quashed.

2. The case of the respondent in W.A.(MD).No.1630 of 2011 before the learned Single Judge was that the respondent mill was assessed to income tax. The respondent mill filed its return of income for the assessment year 2000 - 2001, relating to the accounting year ended on 28.11.2000, admitting a total income of Rs.28,18,050/- under the special provisions of Section 115(JA) of the Act, 1961, as the income computed under the normal provisions of the Act was nil. The Assessing Officer issued a notice under Section 143(2) of the Act for detailed scrutiny and the respondent mill filed all the required details. After scrutiny of all the records, the Assessing Officer satisfied and completed the regular assessment under Section 143(3) of the Act. on 10.03.2003, computing a total income of Rs.1,21,28,033. As against the said assessment, the respondent mill preferred an appeal. After the expiry of five years, the respondent mill received a notice on 31.03.2006, which was issued under Section 148 of the Act, directing the respondent mill to submit return of income in the prescribed form within a period of thirty days from the date of receipt of the said notice on the ground that the Assessing Officer has reason to believe that the income of the respondent mill chargeable to tax had escaped assessment within the meaning of Section 147 of the Act.

3. It was the further case of the respondent mill that the said notice nowhere indicates about the approval of the Commissioner of Income Tax - I, Madurai. The respondent mill sent a reply on 02.05.2006 under protest and requested the Assessing Officer to disclose the reasons recorded for initiating action under Section 147 of the Act. It was replied by the appellant that it was excessive claim under Section 80(HHC) of the Act. Again, a further detailed reply was requested by the respondent mill. On 26.6.2006, a reply was received by the respondent mill stating that subsequent to the amendment to Section 80(HHC) of the Act, assessee, having export turn over of more than Rs.10 crores, who cannot prove that for profit from sale of DEPB license, they have choice between DEPB and duty drawback and the rate of DEPB was lower than duty drawback, are not eligible for increasing the business profit by 90% of DEPB profit. It was further stated in the said reply that the said notice was issued after obtaining prior approval of the Commissioner of Income Tax, Madurai.

4. According to the learned counsel for the respondent mill, the respondent mill had disclosed all details necessary for computation under normal provisions as well as the special provisions of Section 115 (JA) of the Act. There was no failure on the part of the assessee to disclose primary facts and there is no such allegation to that effect in the notice. It was also contended that the re-assessment proceedings can be issued under Section 147 of the Act, if there is failure on the part of the



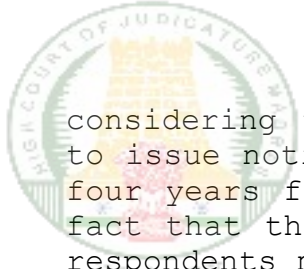
assessee to disclose primary facts necessary for the assessment and if there is no such allegation, the assessment already made cannot be reopened for re-assessment, after expiry of four years from the last date of the relevant assessment years and the said issue has already been concluded in several decisions.

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5. The case of the respondent in W.A.(MD).No.1631 of 2011 before the learned Single Judge was that on 24.10.2011, the respondent mill filed its return of income for the previous year ended on 31.03.2001, admitting a total income of Rs.3,81,49,140/-. The return of income was processed and the same was also accepted and an intimation was also received by the respondent mill on 29.10.2002. A detailed scrutiny notice was also issued, for which the respondent mill furnished all the details. After the scrutiny and satisfaction and after making additions and re-working the claim for deduction under Section 80(HHC) of the Act, the Assessing Officer completed the regular assessment under Section 143(3) of the Act, determining a total income of Rs.4,16,41,804/-. Aggrieved over the same, the respondent mill filed an appeal before the Commissioner of Income Tax (Appeals - II), Madurai, contesting various additions and adjustments and the Appellate Authority passed an order in I.T.A.No.101/2004-5, on 01.09.2004, partly allowing the appeal filed by the respondent mill.

6. As against the said order, the appellant - Revenue filed an appeal before the Income Tax Appellate Tribunal. The respondent mill also filed cross - objection. The said appeal filed by the appellant and the cross - objection filed by the respondent mill were disposed of by the Income Tax Appellate Tribunal on 26.04.2006. The Assessing Officer issued notice under Section 148 of the Act, on 27.03.2008, on the ground that he has reason to believe that the income has escaped assessment and that he proposed to re-assess the income for the assessment year 2001 - 2002. The respondent mill was directed to file return of income within thirty days from the date of receipt of the said notice. By a letter dated 29.03.2008, the respondent mill requested the Assessing Officer to furnish the reasons recorded for re-opening the assessment. A reply dated 08.04.2008 was received by the respondent mill stating that as per the amended provisions of Section 80 (HHC) of the Act, if export turn over exceeds Rs.10 Crores, additional 9% of the incentive on DEPB has to be withdrawn. On 21.04.2008, an objection to the said reply dated 08.04.2008 was filed by the respondent mill requesting him to drop the proceedings on the ground that the Assessing Officer has no jurisdiction to reopen the assessment completed under Section 143(3) of the Act, after four years from the date of end of the assessment year and the same is prohibited under proviso to Section 147 of the Act. Even though hearing was given with regard to the jurisdictional aspect, the Assessing Officer was proceeding with the re-assessment. Hence, the notices issued under Section 148 of the Income Tax, dated 31.03.2006 and 27.03.2008, rejecting the objections raised by the respondents mills were challenged mainly on the ground that the impugned notices issued to the respondents are without jurisdiction, as there is a statutory bar to issue such notice on the ground of escaped assessment, particularly, when there was no suppression pointed out.

7. The said Writ Petitions were opposed by the appellant - Revenue contending that the Writ Petitions are premature, as the Assessing Officer is entitled to re-open the assessment and the respondents mills can raise all objections, once final order is passed. The learned Single Judge,



considering the lack of jurisdiction on the part of the Assessing Officer to issue notice of re-assessment on the ground of escaped assessment beyond four years from the date of end of the assessment year and considering the fact that there is no reason mentioned to attract the exception, i.e., the respondents mills have failed to disclose the primary facts relating to the assessable income and also relying on the Judgment of the Hon'ble Supreme Court in Commissioner of Income Tax and another vs. Foramer France reported in 2003 185 CTR (SC) 512 : 2003 (264) ITR 566 (SC), held that notice of escaped assessment can be issued before the expiry of four years from the last date of the relevant assessment years and ultimately, set aside the notices issued under Section 148 of the Act and allowed the Writ Petitions.

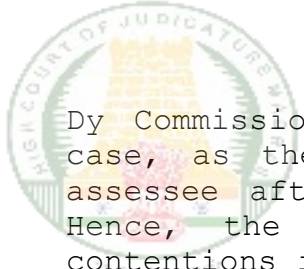
8. The contention raised in these Writ Appeals is that the exemption claimed by the respondents mills under Section 80 (HHC) of the Act was allowed at the time of original assessment and only after the final order of assessment is passed, the respondents mills can challenge the same by way of filing an appeal before the Appellate Authority.

9. We have considered the above submissions made by the respective learned counsel. It is not the case of the appellants - Revenue that the respondents mills have not furnished primary facts before the Assessing Officer and in fact, after the submissions of the accounts, notices were issued to both the respondents mills to furnish all details and the said details and accounts were also furnished and after satisfaction, the Assessing Officer completed the regular assessment under Section 143(3) of the Act and determined the total income and re-worked the deduction in respect of both the respondents mills. Therefore, the appellants - Revenue cannot contend that the respondents mills have not furnished primary facts to attract Section 147 of the Act. In the absence of such reasons contained in the notice, the respondents mills are justified in approaching this Court seeking to quash the said notices issued by the appellants, as the notices were issued after the expiry of four years from the date of final assessment orders passed in respect of the respective assessment years. Even in the counter affidavit filed by the Revenue, there is no pleading regarding non-furnishing of primary facts while assessment was finalized by the Assessing Officer. If the respondents in these Writ Appeals suppressed or wrongly claimed any deduction, the Assessing Officer could issue the impugned notices as per Section 147 of the Act.

10. Here, in this case, notice of escaped assessment was issued for the year 2000 - 2001. The said notices are dated 31.03.2006 and 27.03.2008. The said notices being issued after the expiry of four years, which is barred by limitation. It is a well settled proposition of law that while dealing with a taxing provision, the principle of strict interpretation should be applied. The Hon'ble Supreme Court in the decision in Sneh Enterprises v. Commissioner of Customs reported in 2006 (7) SCC 714, held so. In the decision in Manish Maheshwari v. Assistant Commissioner of Income Tax and another reported in 2007 (3) SCC 794, the Assessing Officer having not recorded his satisfaction while issuing notice under Section 158-BC of the Act, the said notice was set aside by the Hon'ble Supreme Court holding that recording his satisfaction is mandatory.

<https://hcservices.ecourts.gov.in/hcservices/>

11. The decision relied on by the appellant in the grounds raised in the appeal memorandum reported in 2010 325 ITR 428 [Mavis Satcom Ltd., vs.



Dy Commissioner of Income Tax] is distinguishable on the facts of this case, as the impugned order, in the cited case, was challenged by the assessee after re-assessment order was passed by the Assessing Officer. Hence, the Writ Petition was dismissed with liberty to raise all contentions including period of limitation before the Appellate Authority.

12. Applying the said Judgments to the facts of the present case, we are of the view that the decision taken by the learned Single Judge is just and proper, as the appellants have no authority or jurisdiction to issue notice of escaped assessment beyond the period of four years, as no allegation of non-furnishing of primary facts is made.

13. The contention of the appellants that the respondents can wait till the final order is passed, and thereafter only, they can challenge the same before the Appellate Authority is also unsustainable, as the jurisdictional issue is raised by the respondents and as the learned Single Judge satisfied about that, the learned Single Judge thought it fit to interfere with the said notices. It is well settled principle of law that such notices can be issued only if the authority is competent and vested with jurisdiction to issue the same and if the notice cannot be issued due to bar expressly provided in the statute itself, the aggrieved parties can always approach the Court and they need not wait till final assessment orders are passed. Issuance of notice, after expiry of the period, without any justifiable reason, is arbitrary exercise of power and the Courts are entitled to interfere with the same, if no factual dispute arises for consideration by the Statutory Authority.

In fine, we find no merit in these Writ Appeals, and accordingly, these Writ Appeals are dismissed. No costs.

SD

ASST REGISTRAR (Records)

/TRUE COPY/

SUB ASST REGISTRAR

NB

To

1.The Joint Commissioner of Income-Tax,
Company Circle I, Madurai,
2, V.P.Rathinasamy Road, Madurai 625 002.

2.The Assistant Commissioner of Income-tax,
Company Circle I, Virudhunagar.

2CC TO MR. R.SRINIVASAN, ADVOCATE, SR: 2844 AND 1631:

DM:2012:FEBRUARY:28::

COMMON JUDGMENT MADE IN
W.A. (MD) .Nos.1630 and 1631 of 2011
31.01.2012

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