IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN
&
THE HONOURABLE MR. JUSTICE ASHOK MENON

TUESDAY, THE 9TH DAY OF JANUARY 2018 / 19TH POUSHA, 1939

WA.No. 1094 of 2013

AGAINST THE ORDER/JUDGMENT IN WP(C) 7863/2013 of HIGH COURT OF KERALA DATED 12-04-2013

APPELLANT(S)/PETITIONER:

M/S. SUNTEC BUSINESS SOLUTIONS PVT. LTD.
321, NILA, TECHNOPARK CAMPUS, TRIVANDRUM 695 581,
REPRESENTED BY ITS CHIEF FINANCIAL OFFICER, MR. SURESH RAO V.R.

BY ADVS.SRI.M.GOPIKRISHNAN NAMBIAR
SRI.P.GOPINATH
SRI.P.BENNY THOMAS
SRI.K.JOHN MATHAI

RESPONDENT(S)/RESPONDENTS:
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1. UNION OF INDIA
   REPRESENTED BY THE SECRETARY, MINISTRY OF FINANCE
   (DEPARTMENT OF REVENUE), NORTH BLOCK, NEW DELHI 110 001.

2. THE COMMISSIONER OF INCOME TAX
   AAYAKAR BHAVAN, KOWADIYAR, THIRUVANANTHAPURAM 695 003.

3. THE ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE 1 (1)
   AAYAKAR BHAVAN, KOWADIYAR, THIRUVANANTHAPURAM 695 003.

R1 BY ADV. SRI.P.K.R.MENON,SR.COUNSEL, GOI(TAXES)
R2-R3 BY ADV. SRI.JOSE JOSEPH, SC, FOR INCOME TAX

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 09-01-2018, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WA.No. 1094 of 2013

APPENDIX

APPELLANT(S) ANNEXURES:

ANNEXURE 1: COPY OF FORM 56G FOR ASSESSMENT YEAR 2005-06 FILED BY THE APPELLANT BEFORE THE 3RD RESPONDENT.

ANNEXURE 2: COPY OF THE LETTER DATED 18-02-2009 FILED BY APPELLANT BEFORE THE 3RD RESPONDENT.

ANNEXURE 3: COPY OF FORM 56G FOR THE ASSESSMENT YEAR 2008-09 FILED BY THE APPELLANT BEFORE THE 3RD RESPONDENT.

ANNEXURE 4: COPY OF DETAILED BREAK-UP FILED BY THE APPELLANT BEFORE THE 3RD RESPONDENT.

RESPONDENT(S) ANNEXURES:

NIL

//TRUE COPY//

PA TO JUDGE

dkr

K.VINOD CHANDRAN & ASHOK MENON, JJ.

W.A. No. 1094 of 2013

Dated this the 9th day of January, 2018

J U D G M E N T

Vinod Chandran, J.

The appellant was before the learned Single Judge seeking interference in the re-assessment proceedings initiated under Section 147 of the Income Tax Act, 1961 (for short "Act"). The appellant was concerned with the assessment year 2005-06, which was finalised by the 3rd respondent, the Assessing Officer, as per Ext.P1 dated 24-12-2007 under Section 143(3) of the Act. Proceedings were initiated under Section 154 of the Act, which stood finalised as per Ext.P2 order. Appeals are pending against Exts.P1 and P2 orders before the first appellate authority.

2. While so, by Ext.P6 notice dated 29-03-2012, the 3rd respondent initiated proceedings under Section 148 of the Act proposing to effect re-assessment under Section 147. Ext.P6 notice indicates that the re-assessment was proposed without any reasons shown. The appellant then filed Ext.P7 requesting for the reasons

for re-assessment for the proposal, which is a mandate as per ***GKN Driveshafts (India) Ltd. v. ITO, (2003) 259 ITR 19***. The reasons were hence communicated as per Ext.P8, which indicated that the deduction granted under Section 10B amounting to US$ 1,23,691/- (Rs.49,08,058.85/-) for the assessment year 2005-06 is proposed to be disallowed for the reason of non-compliance with Section 10B(3).

3. The appellant filed objection as seen from Ext.P9, which was rejected and Ext.P12 order was passed. Ext.P12 order was challenged before the learned Single Judge on the ground that there is only a mere change of opinion, which does not permit initiation of proceedings under Section 148, as has been held by the Hon'ble Supreme Court in ***Commissioner of Income Tax v. Kelvinator of India, (2010) 320 ITR 561(SC)***. Yet another ground taken was of limitation under Section 147, being confined to four years from the end of the relevant assessment year and an extension of two years permitted only if there is a suppression alleged. The assessment year was 2005-06 and the proceedings under Section 147 had to be

taken prior to 31-03-2010. The proceedings were taken on 29-03-2012, within the extended two year period.

4. The assessee also contented that there need be no re-opening since the deduction now sought to be disallowed has already been disallowed, on which an appeal is pending. The learned Single Judge found that Section 147 proceedings were issued on a specific ground as communicated to the appellant. There could be no allegation of change of opinion by way of review, was the specific finding. Taking the view that the assessee is mainly agitating a question of fact, which can be brought to light on furnishing the export turnover details; the assessee was relegated to the assessment proceedings.

5. The contention raised before this Court by the appellant is also that the specific amount which is now sought to be disallowed, was earlier disallowed in the assessment order. The assessment order is seen at Ext.P1. In paragraph 8 of Ext.P1, a dis-allowance of Rs. 1,53,95,507/- was made out of the total claim of deduction of Rs.15,41,91,530/- under Section 10B. The appeal memorandum as seen from Ext.P3 also, in paragraph 7 indicates the

assessee having challenged the said dis-allowance. In reply to the notice issued by the Income Tax Department and the subsequent communication of ground for re-assessment as seen from Ext.P10, the assessee has filed an objection at Ext.P11. In Ext.P11, the break up of the total amount disallowed has been shown. The claim made as against the bill issued in the name of M/s Sobha Rennaisance, totalling US$ 1,23,691/-, as converted to Indian currency at the existing rate of Rs.43.53 totaling Rs.53,84,269/-, is seen included in the dis-allowance made. As directed by the learned Single Judge, the Assessing Officer in carrying out the re-assessment should verify whether the amounts now sought to be disallowed, has already been disallowed. If dis-allowance has already been effected, there is no question of any further dis-allowance on that ground. The dis-allowance then would depend upon the orders passed in the appeal filed against Ext.P1.

6. As to the limitation, we have to notice that the assessee claimed the said deduction in the assessment year 2005-06. The claim was under Section 10B and as per clause (3) of the provision, deduction claimed had to be of amounts which is brought into the

Country, within six months from the close of the previous year. The previous year ended on 31-03-2005 and the assessee ought to have brought in the amounts prior to 30-09-2005, unless extended by the Reserve Bank of India as provided under Explanation to sub-section (3). If such extension has not been granted, definitely, there is a suppression in so far as the assessee having filed return, presumably, only after closure of the previous year, which is long after the date prescribed in sub-section (3) for bringing the amounts into the Country.

7. We are of the opinion that the re-assessment proposed, within the six year period is perfectly in order, if the said amounts have not already been disallowed in the original assessment order itself. We hence direct that in the re-assessment proceedings, the specific contention raised by the assessee as to the deduction to the extent of US$ 1,23,691/- having already been carried out in the original assessment order is to be verified. We also make it clear that the re-assessment having been initiated on the specific ground, it should be confined to that ground alone. The assessee shall be afforded an opportunity of hearing and the exercise shall be

completed within a period of three months from the date of receipt of certified copy of the judgment. With the above observations and modifying the judgment of the learned Single Judge, to the limited extent of the directions herein above, we dispose of the Writ Appeal. No order as to costs.

Sd/-
K.VINOD CHANDRAN
Judge

Sd/-
ASHOK MENON
Judge

dkr

True copy

PA to Judge