

In the High Court of Judicature at Madras

Dated : 19.7.2016

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.24894 of 2016 & WMP.No.21264 of 2016

M/s.PVP Ventures Limited, a public
limited company rep.by its Head of
Finance & Accounts Mr.S.Kannan

...Petitioner

Vs

The Income Tax Officer, Corporate
Ward -1 (1), Room No.615, 6th Floor,
No.121, Mahatma Gandhi Road,
Chennai-34.

...Respondent

PETITION under Article 226 of The Constitution of India praying for the
issuance of a Writ of Certiorari to call for the records of the respondent in
C.W.1/1/148/AAFCA0242C/2016-17 dated 10.6.2016 and the consequential
notice issued under Section 148 of the Income Tax Act, 1951 dated
16.3.2016 and quash the same as illegal and without jurisdiction.

For Petitioner : Mr.R.Sivaraman
For Respondent : Mr.Arunkurian Joseph for
Mr.T.Ravikumar

ORDER

Heard Mr.R.Sivaraman, learned counsel for the petitioner and
Mr.Arunkurian Joseph, learned counsel appearing on behalf of the
respondent.

2. The petitioner has challenged a notice issued by the respondent to M/s.AGS Hotels and Resorts Private Limited (hereinafter referred to as M/s.AGS) stating that he has reasons to believe that income chargeable to tax for the assessment year 2009-10 escaped assessment within the meaning of Section 147 of the Income Tax Act, 1961 (hereinafter referred to as the Act). Further, the respondent proposed to assess/re-assess the income for the said assessment year and directed the said company to deliver to him, within 30 days from the date of service of the notice dated 16.3.2016, a return of their income in the prescribed form for the said assessment year. The notice dated 16.3.2016, though addressed to M/s.AGS, has been served on the petitioner on the ground that the petitioner is the holding company.

3. The petitioner would state that they were compelled to receive the said notice dated 16.3.2016 and immediately they sent a letter dated 6.5.2016 pointing out that M/s.AGS has been dissolved/struck off the register on 24.3.2014 under Section 560(3) of the Companies Act, 1956. The petitioner enclosed a copy of the notice under Section 560(3) of the Companies Act, 1956, for the consideration of the respondent. The petitioner stated that the copy of such notice was submitted to the respondent at the time of receipt of the notice dated 16.3.2016, on 29.3.2016. It was further pointed out that the Registrar of Companies issued 30 days' notice of his intention to strike the said company off the register, to the Office of the Chief

Commissioner of Income Tax vide notice dated 24.2.2014. Thereafter, M/s.AGS stood dissolved with effect from 24.3.2014. Hence, the issue of a notice under Section 148 of the Act dated 16.3.2016 in the name of a non-existent person is invalid and the petitioner requested the respondent to drop the proceedings initiated under Section 148 of the Act.

4. On receipt of the reply, the respondent sent another communication dated 10.6.2016, addressed to the Principal Officer of the petitioner, describing them as the holding company of M/s.AGS. In the communication dated 10.6.2016, the petitioner was requested to attend a personal hearing on 27.6.2016 and clarify as to how the dissolution/strike off under Section 560(3) of the Companies Act, 1956 bars the initiation of re-assessment proceedings for the assessment year 2009-10 relating to the period prior to dissolution/strike off. The attention of the petitioner was drawn to Section 560(5)(a) and (b) of the Companies Act, 1956 and it was stated that M/s.AGS is still an assessee in respect of the assessment year 2009-10 and that every director, manager or other officer, who were nominated by the holding company, are continuing and are being enforceable as if M/s.AGS has not been dissolved.

5. The petitioner was further directed to produce all documentary evidence in connection with dissolution/strike off, give names and addresses of the directors at the time of filing of application for dissolution/strike off; and furnish the copy of the notice claimed to have been sent to the Chief

Commissioner of Income Tax dated 24.2.2014. After seeking the above details/documents, the respondent stated that the petitioner has to comply with the notice under Section 148 of the Act immediately and the non compliance will enable the respondent to complete the assessment under Section 144 and contemplate penal proceedings under Section 271(1)(b) and other related provisions of the Act.

6. Learned counsel for the petitioner vehemently contended that the impugned orders are wholly illegal as they had been issued to a non existent company, which has been struck off the register of the Registrar of Companies and that in spite of having intimated the same to the respondent, the respondent issued the impugned notices and in the light of the fact that the petitioner challenged the impugned proceedings as if they are without jurisdiction, the petitioner has not complied with the procedure required to be followed as pointed out by the Supreme Court in the case of ***M/s.G.K.N. Drive Shafts (India) Ltd. Vs. I.T.O. [(2003) 259 ITR 19]***.

7. It is the further contention of the learned counsel for the petitioner that the respondent threatened to complete the assessment under Section 144 of the Act, if the petitioner fails to immediately comply with the notice under Section 148 of the Act and that this is not feasible of compliance, as the notice has been issued to a non existent company

8. The learned Standing Counsel appearing for the Department pointed out that after the petitioner sent their reply dated 6.5.2016, the impugned

communication dated 10.6.2016 has been sent to the petitioner asking them to clarify as to how the dissolution/strike off under Section 560(3) of the Companies Act, 1956 bars the initiation of re-assessment proceedings for the assessment year 2009-10 relating to the period prior to dissolution/strike off.

9. After hearing the parties, this Court is of the view that the impugned proceedings dated 10.6.2016, being a notice calling upon the petitioner to clarify certain factual issues, cannot be put to challenge under Article 226 of The Constitution. That apart, the respondent called for documentary evidence in connection with the dissolution of M/s.AGS, names and addresses of the directors at the time of filing of application for dissolution/strike off and also copy of the notice dated 24.2.2014 claimed to have been sent to the Chief Commissioner of Income Tax. In such circumstances, it is appropriate for the petitioner to produce the documents before the respondent.

10. The learned counsel for the petitioner relied upon an interim order passed by the Hon'ble Division Bench of the Bombay High Court in W.P. No.1069 of 2016 dated 8.6.2016 wherein the Bombay High Court granted an interim stay of an assessment order made on a non existent entity.

11. On a perusal of the said order of the Hon'ble Division Bench of the Bombay High Court, it is seen that they have observed that normally they would not have entertained a writ petition as against an order of assessment, but prima facie, the impugned notice having been issued to a non existent entity, which has been dissolved and struck off the register of the Registrar

of Companies, the petitioner therein having made out a prima facie case, an interim order of stay was granted.

12. In the instant case, the fact of the dissolution/strike off is to be examined by the respondent and the present attempt on the part of the petitioner is to interdict a legal proceedings at the instance of the respondent even at the threshold. The impugned notice dated 10.6.2016 seeks certain clarifications from the petitioner and admittedly, such clarifications relate to the assessment year 2009-10, which is prior to the dissolution/strike off. Therefore, in my opinion, the petitioner should appear before the respondent and clarify all issues, on which, clarifications have been sought and produce documentary evidence called for.

13. The apprehension of the petitioner is that the respondent will proceed to complete the re-assessment under Section 144 of the Act.

14. If the respondent called for certain documents and sought clarifications, then simultaneously the respondent cannot proceed with the re-assessment proceedings under Section 144 of the Act. The petitioner is entitled to raise all issues before the respondent and after considering the contentions raised by the petitioner, the respondent shall pass a speaking order. If, in the hands of the respondent, the petitioner's explanation is not found satisfactory, then only he can proceed further in the matter. Therefore, the directions issued in paragraphs 5 and 6 of the impugned communication dated 10.6.2016 have to be necessarily kept in abeyance till the respondent

takes a decision on the clarifications to be given by the petitioner as called for by the respondent after producing the documentary evidence, which the respondent directed the petitioner to produce.

15. In the light of the above, this Court is not inclined to interfere with the impugned proceedings and accordingly, the writ petition is dismissed with a direction to the petitioner to appear before the respondent on the appointed date either in person or through an authorized representative, clarify all the issues and produce necessary documentary evidence. After taking note of the clarifications and perusing the documents and after hearing the authorized representative of the petitioner, the respondent shall pass a speaking order and communicate the same to the petitioner within a period of 15 days from the date, on which, personal hearing is concluded. Till such time, the re-assessment proceedings shall be kept in abeyance and plea of limitation cannot be raised in the event the assessment has to proceed further. This direction has been issued with a view to afford an opportunity to the petitioner to place facts before the respondent. No costs. Consequently, the above WMP is closed.

19.7.2016

Index : Yes
Internet : Yes

To
The Income Tax Officer, Corporate Ward -1 (1), Room No.615, 6th Floor,
No.121, Mahatma Gandhi Road, Chennai-34.

RS

T.S.SIVAGNANAM,J

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