(2014) 01 GUJ CK 0017

In the Gujarat High Court

Case No : Special Civil Application No. 17851 of 2013

Shree Palani Transport Co. APPELLANT

Vs

Assessing Officer RESPONDENT

Date of Decision : 07-01-2014

Acts Referred:
Income Tax Act, 1961 — Section 147, 148, 40(a)(ia)

Citation : (2014) 368 ITR 524

Hon'ble Judges : Sonia Gokani, J;Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Advocate : Hardik V. Vora, Advocate for the Appellant; Pranav G. Desai, Advocate for the Respondent

Judgement

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Akil Abdul Hamid Kureshi, J.—In view of the short controversy that we intend to enter into, we have heard the learned advocates for the parties for final disposal of the petition. The petitioner-assessee has challenged the order of assessment dated November 22, 2013, passed by the respondent-Assessing Officer on various grounds. It is not necessary to record all the grounds since we are inclined to remand the assessment proceedings to the Assessing Officer on the limited question of denying the reasonable opportunity to the petitioner to represent its case.

2. The brief facts are as under:

3.1 For the assessment year 2006-07, the assessment order was passed on August 11, 2008, after scrutiny. To reopen such assessment, a notice was issued under section 148 of the Income-tax Act, 1961 (hereinafter referred to as "the Act"), on March 20, 2013. Along with the notice, reasons for reopening were also supplied. The petitioner objected to the process of reopening under communication dated November 15, 2013. Such objections were disposed of on November 21, 2013.

3.2 While this was going on, the Assessing Officer went ahead with the reassessment proceedings and fixed various dates for hearing. In one such notice dated November 15, 2013, the petitioner was called upon to explain why the freight payment of Rs. 1.63 crores (rounded off) should not be disallowed under section 40(a)(ia) of the Act. He was given time up to November 22, 2013, and was asked to attend the office of the Assessing Officer on such date at 03.30 p.m. In response to such notice, the petitioner sent a communication dated November 22, 2013, and stated as under:

"With regard to the above subject and reference, we request the honourable Sir to kindly adjourn the hearing as we are compiling the necessary details. Also as party is currently outside the city we require 20 days time to collect the details and comply your show-cause notice.

Also your honour has not dealt with objections against reassessment under section 147. As per the honourable Supreme Court ruling in GKN Driveshafts (India) Ltd. Vs. Income Tax Officer and Others, it is mandatory to pass a speaking order dealing objections of the assessee. Hence, passing any order or requiring any further information without passing a speaking order would be contempt of order of the Supreme Court.

In view of the above, we require your honour to first pass a speaking order on objections raised by the assessee against reassessment proceedings as directed by the Supreme Court and then ask for any further information in the course of the reassessment proceedings.

In the circumstances kindly adjourn the hearing to any other date at the convenience of the honourable Sir."

3.3 It is not in dispute that such communication was received by the Assessing Officer in person as the inward stamp shows on the said notice, a copy of which is produced at page 77 of the compilation. Despite this, the Assessing Officer passed the impugned order of assessment on November 22, 2013 itself.

3. We are of the opinion that the Assessing Officer showed undue hurry in concluding the assessment proceedings, even though the time limit for completing the same was available till March 31, 2014, as pointed out to us by the learned counsel for the petitioner. When the petitioner was granted time till 03.30 p.m. on November 22, 2013, to reply to certain queries and when the petitioner had applied for extension of time indicating valid reasons, the Assessing Officer, in our opinion, ought not to have brushed aside such a request for adjournment and proceeded to a pass final order of assessment, that too, on the same day. Significantly, the application of the petitioner for time was not even decided. Without refusing time as prayed for and without communicating such refusal of adjournment to the petitioner, the Assessing Officer on the very same day, on which the hearing was fixed, proceeded to pass the order of assessment.

4. To our mind, this has resulted into gross violation of the principles of natural justice to give a fair hearing to the petitioner, on which short ground, we are inclined to quash the assessment order and remand the assessment proceedings before the Assessing Officer and disposal of the same in accordance with law.

5. The learned counsel for the Revenue contended that the assessment order is subjected to statutory appeal and this court, therefore, should not exercise the writ jurisdiction. When we find that violation of the principles of natural justice is writ large on the face of record, it would not be necessary to relegate the petitioner to the appellate forum. The decision of the Supreme Court in the case of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, may be referred to in this respect.

6. Before concluding, we would like to clarify two aspects. Firstly, in his application dated November 22, 2013, the petitioner had insisted that the Assessing Officer must pass a speaking order disposing of the objections to the reopening of assessment as is provided in the decision of the Supreme Court in the case of GKN Driveshafts (India) Ltd. Vs. Income Tax Officer and Others, . This was almost made a pre-condition for the petitioner to participate further in the assessment proceedings. We do not approve of any such approach on the part of the petitioner. If the petitioner wants to participate in the proceedings, he may do so in the fresh round. The second aspect is that the petitioner has raised several other contentions against the order of assessment impugned in the present petition. We have expressed no opinion on such aspects and leave it open for the petitioner to raise the same in future, if need so arises.

7. In the circumstances, the impugned order dated November 22, 2013, is quashed. The Assessing Officer shall, however, be at liberty to pass a fresh order of assessment after hearing the petitioner, for which we fix the date of January 20, 2014, for the petitioner to appear before the said authority, for which separate notice shall not be necessary. If for some reason, it is not convenient to the Assessing Officer to conduct and complete the hearing on January 20, 2014, he may on such date refix the hearing. With these directions, the petition is disposed of.

