

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 787 OF 2016

M/s. Amaya Infrastructure Pvt. Ltd.

.. Petitioner

v/s.

Income Tax Officer, Ward 12(1)(1) & Ors.

.. Respondents

Mr. Vimal Gupta, Senior Counsel a/w Aashish Gabhale for the petitioner

Mr. Arvind Pinto for the respondent

**CORAM : M.S. SANKLECHA &
A.K. MENON, J.J.**

DATED : 20th APRIL, 2016.

PC.

1. This petition under Article 226 of the Constitution of India challenges the notice dated 30th March, 2015 issued under Section 148 of the Income Tax Act, 1961 (the Act). The impugned notice seeks to reopen the assessment for Assessment Year 2008-09.

2. The impugned notice dated 30th March, 2015 issued under Section 148 of the Act intimated to the petitioner that the Assessing Officer has reason to believe that income chargeable to tax has escaped assessment. It further called upon the petitioner to file a Return of Income in the prescribed form for the subject assessment year within 30

days of the service of the notice. The petitioner admittedly filed its Return of Income only on 29th December, 2015 for the subject assessment year and in terms of the order of the Apex Court in **G.K.N Driveshafts (India) Ltd. Vs. Income Tax Officer & Ors. 259 ITR 19** sought reasons recorded by the Assessing Officer in support of the impugned notice.

3. On 4th January, 2016, the Assessing Officer furnished to the petitioner reasons recorded while issuing the impugned notice dated 30th March, 2015. Thereafter, on 4th January, 2016 itself, the Assessing Officer issued notices under Section 142(1) and 143(2) of the Act seeking various details for the purposes of assessing the petitioners to tax in respect of the assessment year 2008-09. The above notices also called upon the petitioner to attend the office of the Assessing Officer on 8th January, 2016.

4. On 8th January, 2016 the petitioner sought an adjournment of the hearing fixed on 8th January, 2016 before the Assessing Officer. This on the ground that the reasons for reopening of the assessment received from the Assessing Officer have been forwarded to its consultant and as the matter is very old it is collecting information and

would produce the information sought for within a week. Thereafter, on 14th January, 2016, the petitioners submitted the details called for by the Assessing Officer but pointed out that the information is being submitted subject to the objections to the impugned notice which would be filed by it. On 22nd January, 2016 the petitioners filed its objections to the reasons recorded in support of the impugned notice. On 25th January, 2016, the Assessing Officer disposed of the objections to the reasons recorded in support of the impugned notice. This petition was filed on 2nd March, 2016 and at the instance of the petitioners ad-interim relief was granted staying the impugned notice dated 30th March, 2015.

5. At the very outset, Mr. Pinto, learned Counsel for the Revenue raised a preliminary objection that as the petitioner has participated in proceedings before the Assessing Officer in respect of the impugned notice, this Court should not exercise its extra-ordinary writ jurisdiction in favour of the petitioners.

6. In the above view, without going into the merits of the reasons recorded in support of the impugned notice and the manner in which the objections have been dealt with by the Assessing Officer, we called

upon Mr. Gupta, the learned Senior Counsel to address us only on the issue of exercising our extra-ordinary jurisdiction in the present facts viz the petitioner having participated in the assessment proceedings and there being an efficacious alternative remedy under the Act from the orders passed by the Assessing Officer.

7. In response, Mr. Vimal Gupta, learned Senior Counsel for the petitioners submits as under :-

(a) The reasons in support of re-opening of the impugned notice were given to the petitioners on 4th January, 2016. The petitioners filed its objections on 22nd January, 2015. However, in the meantime, the petitioners responded to the notice dated 4th January, 2016 of the Assessing Officer seeking information by its letter dated 14th January, 2016. This because the petitioner was apprehensive that in the absence of giving the required information, the Assessing Officer may proceed to pass an assessment order to its prejudice;

(b) The giving of information by the letter dated 14th January, 2016 was without prejudice to its objections to the reasons which were to be filed in due course. Thus, there was no participation in proceedings before the Assessing Officer; and

(c) A compilation of judgments were filed in support of the petition.

However out of the compilation, attention was invited to and reliance was placed only upon following three decisions :-

- (i) *Commissioner of Income Tax Vs. ITSC & Ors. 365 ITR 87.*
- (ii) *Whirlpool Corporation Vs. Registrar of Trade Marks & Ors. 8 SCC 1.*
- (iii) *PR. Easwaran Vs. Sixth Income Tax Officer, Circle II, Coimbatore 72 ITR 263.*

8. Our jurisdiction under Article 226 of the Constitution of India is plenary. Therefore, we would exercise the same whenever we are of the view that interest of justice would require its exercise. We are clear that having of jurisdiction does not make it obligatory upon us to exercise our extra-ordinary writ jurisdiction without reference to the facts before us. Therefore, where the petitioners have participated in the proceedings under the Act before the Assessing Officer and thereafter file a writ petition on the ground that the authority has no jurisdiction, we normally will not entertain the petition. This is particularly so as an effective alternative remedy is available under the Act, to set aside the orders passed by the authority, which the petitioner claims is without jurisdiction. The provisions under Section 147 and 148 of the Act empowers the Assessing Officer to issue a reopening notice, subject to satisfaction of the parameters set out therein. It is

open to the assessee to challenge the order of the Assessing Officer under the Act on the ground that the conditions precedent for its exercise are not satisfied. This could be done either by challenging it under Article 226 of the Constitution of India or by challenging it before the authorities under the Act. Therefore, where a party submits itself to the jurisdiction of the Assessing Officer and challenges the issue of his jurisdiction during the course of proceedings of reassessment, we would not normally exercise our jurisdiction. This is also particularly so as the petitioners are not remedy-less and can challenge the orders of the Assessing Officer before the appellate authorities under the Act and secure the same ultimate relief.

9. In this case, we find that the petitioners have filed detailed information called for by the Assessing Officer under Section 142(1) and 143(2) of the Act and thus participated in the assessment proceedings. This having been done, it is not open for the petitioners to now contend that this Court should exercise its extra-ordinary jurisdiction and prohibit the Authorities from proceeding further with the impugned notice. This is particularly so as the question of jurisdiction has been raised by the petitioners before the Assessing Officer during the assessment proceedings under the Act. In the

present facts, the petitioners have participated in the proceedings before the Assessing Officer. The objections to the reasons recorded by the Assessing Officer in support of the impugned notice during the assessment proceedings is to point out to him the reassessment proceedings are bad as the requirement of Sections 147 and 148 of the Act are not satisfied. It would be completely different scenario where the petitioners have not participated in the proceedings before the Assessing Officer and object to exercise of jurisdiction by the Assessing Officer at the very threshold and not while participating in the reassessment proceedings. In such cases, it is not a case of a party seeking identical relief by two parallel modes. The orders passed by the Assessing Officer are subject to effective, efficacious alternative remedy under the Act. Therefore, we see no reason to exercise our extra-ordinary jurisdiction in the facts of this case.

10. It may also be pointed out that the impugned notice was issued on 30th March, 2015 calling upon the petitioners to file its Return of Income within 30 days. However, the petitioners chose to file its Return of Income only on 29th December, 2015 and thereafter sought reasons in support of the impugned notice. This delay in filing the Return of Income cannot be lost sight of when one bears in mind the

fact that the re-opening proceedings have to be completed within one year from the end of the financial year, in which the impugned notice seeking to reopen the assessment was issued. This is also evidence of the fact that the object of the petitioners seems to be to delay the proceedings so as to leave very little time for the Assessing Officer to complete the reassessment proceedings. The aforesaid conduct of the petitioners coupled with its submitting to the jurisdiction of the Assessing Officer, dis-entitles the petitioners to the extraordinary relief under Article 226 of the Constitution of India.

11. The three decisions on which Mr. Gupta, learned Senior Counsel for the petitioners place reliance, in our view, do not apply to the facts and circumstances arising in this particular case. The exercise of our extra-ordinary jurisdiction is dependent upon the facts arising before us. The case laws can only be guidelines in exercise of our extra-ordinary writ jurisdiction. The case laws relied upon are not applicable for reasons listed hereunder :-

(a) In *PR. Easwaran (supra)*, the High Court of Madras entertained the petition even though the petitioners had filed its Return of Income consequent to a reopening notice [this is prior to *G.K.N. Driveshaft (India) Pvt. Ltd. (supra)*]. The Court negated the submissions of the

Revenue's Counsel that as the petitioner had filed its Return pursuant to the notice, he has submitted himself to the jurisdiction of the Assessing Officer and the Court should not exercise its extra-ordinary jurisdiction. This *inter alia* on the ground that in the facts and circumstances of the case before it judicial intervention was justified. In the present facts, we do not deem it appropriate to exercise our extra-ordinary jurisdiction as the petitioner has in fact submitted to the jurisdiction of the Assessing Officer and has an efficacious alternative remedy under the Act.

(b) The reliance placed on the decision of the Apex Court in *Whirlpool Corporation (Supra)*, in the present facts is inappropriate as the petitioners therein had not invoked the writ jurisdiction of the Court under Article 226 of the Constitution of India after having participated in the proceedings before the Officer under the Trade Marks Act. In this case, we have found that the petitioners have participated in the proceedings before the Assessing Officer and submitted the exercise of his powers to reassess is bad. This was done during the reassessment proceedings.

(c) The reliance upon the *ITSC (supra)* is misplaced as the challenge there was to an order of the Settlement Commission from which no alternative remedy of an appeal is available. The Settlement

Commission in the facts of that case exercised jurisdiction even though according to the Revenue in its challenge before the Court, the applicant had failed to make true and full disclosure of all the material facts in its application for settlement. Thus, it was contended that it had not jurisdiction. The assessee before the Court pleaded that as the Revenue had participated in the proceedings before the Settlement Commission, it is not open to the Revenue to now challenge the orders of the Commission. This was negated by the Court on the ground that mere participation by a party will not confer jurisdiction in the absence of jurisdiction being vested on the Authority under the law. The Court exercised its extra-ordinary jurisdiction as there was no alternative remedy available from the orders passed by the Settlement Commission under the Act. This is indisputedly not so in the present facts. Thus inapplicable.

12. In the present case, the Assessing Officer is bestowed with the powers to reopen an assessment subject to satisfaction of conditions laid down in Sections 147 and 148 of the Act. The petitioner has chosen to submit itself to his jurisdiction and the objections to the reasons are made in the course of reassessment proceedings. The petitioners in this case having participated in the proceedings, do not

deserve our exercising extra-ordinary jurisdiction under Article 226 of the Constitution of India. The petitioners are not remedy-less. They have an effective alternative remedy available under the Act. All contentions left open to be urged before the Authorities.

13. In the aforesaid facts and circumstances, the petition is dismissed.

14. At this stage, Mr. Gupta seeks a stay of this order for a period of four weeks from today. Mr. Pinto, learned Counsel for the Revenue states that the Assessing Officer would not act upon the impugned notice for a period of 3 weeks from today. In the above view, for the purposes of computing the period of limitation under Section 153 of the Act, a further period of 3 weeks from today would stand excluded.

(A.K. MENON, J.)

(M.S. SANKLECHA, J.)