



W.A.No.2691 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

DATED: 30.03.2022

CORAM

**THE HONOURABLE MR. JUSTICE R. MAHADEVAN
AND
THE HONOURABLE MR. JUSTICE J. SATHYA NARAYANA PRASAD**

Writ Appeal No. 2691 of 2021
and
C.M.P. No. 17436 of 2021

SL Lumax Ltd.,
Rep by its Managing Director,
G-15, SIPCOT Industrial Park,
Sriperumbudur Taluk,
Kancheepuam District,
Irrungattukottai - 602 117

.. Appellant

Versus

Deputy Commissioner of Income Tax
Corporate Circle VI - 2
7th Floor, New Block, Room 705
121, MG Road, Nungambakkam,
Chennai – 600 034

.. Respondent

Appeal filed under Clause 15 of Letters Patent against the order passed
by this Court in W.P. No. 35924 of 2016 dated 02.09.2021.

For Appellant : Mr. Srinath Sridevan

For Respondent : Mr. A.P. Srinivas
Senior Panel Counsel



JUDGMENT

[Judgment of the Court was delivered by **R.MAHADEVAN,J.**]

The appellant is the petitioner in W.P. No.35924 of 2016. They have preferred this writ appeal against the order dated 02.09.2021 passed by the learned Judge in the said writ petition.

2.By the order impugned herein, the learned Judge has made the following observation, while dismissing the writ petition filed by the appellant:

“41.In view of the facts and circumstances, this court could able to arrive a conclusion that the case of the petitioner is falling under Sub-clause (c) to Explanation 2 of Section 147 of the Act as it is a deemed case, where income chargeable to tax has escaped assessment and if such deemed cases are traced out, then necessarily the Assessing authority has to draw an inference on certain factual aspects for forming such an opinion and such 'reason to believe' would be certainly falling under the condition that the assessee has not disclosed fully and truly material facts necessary for assessment. Thus, the Assessing Officer had 'reason to believe' that income chargeable to tax has escaped assessment. However, whether it is escaped assessment or not is the subjective adjudication, which is to be done by following the procedures as contemplated under the Act.”



W.A.No.2691 of 2021

WEB COPY

3.The main grievance of the learned counsel for the appellant is that after clearing the returns filed by the appellant for the assessment year 2009-10 by the Transfer Pricing Officer, without making any adjustments and the same having been accepted by the assessing officer, the respondent issued the notice under section 148 of the Income Tax Act for reopening the assessment, that too, after the expiry of four years, on the premise that the income chargeable to tax for the said assessment year has escaped assessment, which is illegal and contrary to the relevant provisions of the Act. The learned counsel further submitted that the reopening of the assessment is based on change of opinion of the assessing officer and not on any new materials on record. However, the learned Judge, instead of quashing the same, erred in concluding that the reassessment proceedings must go on and the appellant has to avail the opportunity to be provided to defend their case and co-operate for the early completion of the same. Therefore, the learned counsel sought to quash the order of the learned Judge and allow this writ appeal.

4.On the other hand, the learned senior panel counsel appearing for the respondent submitted that as per the provisions of section 43A of the Act, revaluation of any asset purchased in foreign currency can be revalued on account of fluctuation in the value of money on the date of exchange and only



W.A.No.2691 of 2021

at the time of actual repayment of the loan; it will be clear from the accounts that there has been no actual repayment made by the assessee/ appellant during the current year; and the claim of Rs.390.96 lakhs on account of depreciation in the current year is higher and hence, the same should have been added back to the book profits as per clause (ia) of Explanation (1) of section 115JB. Thus, there was a shortfall in assessment of income under section 115JB, which warrants re-assessment. The learned counsel further submitted that in any event, the respondent has only rejected the objections filed by the appellant and hence, it is open for the appellant to substantiate its case by producing the necessary materials at the time of hearing the reassessment proceedings. Therefore, according to the learned counsel, the order impugned herein does not call for any interference by this court.

5.Heard both sides and perused the materials placed before this court.

6.Before proceeding further, it is but necessary to look into the relevant facts of the case, which are as follows:

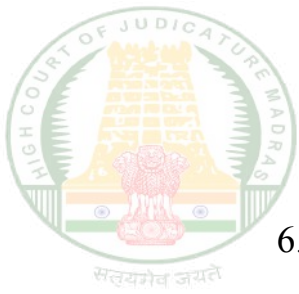
6.1. The appellant is a company incorporated under the Companies Act, 1956 and they are engaged in the business of manufacturing the automobile parts. During the course of its business, they borrowed certain



W.A.No.2691 of 2021

amount from the entities outside India. However, due to unprecedented economic crises witnessed around the globe, they suffered a loss of Rs.4699.80 lakhs. Therefore, the appellant capitalized the Foreign Exchange Loss (Forex Loss) and claimed depreciation for Rs.1.33 lakhs in the books of accounts, which was explained in schedule 21 to the 12th Annual Report for the Assessment Year in question. Accordingly, on 28.08.2009, the appellant company filed its return declaring an income of Rs.5,17,12,710/- and claimed depreciation for Rs.1.33 lakhs.

6.2. While so, the appellant received a notice dated 14.11.2011 under Section 142 (1) of the Act along with a questionnaire. On receipt of the same, the appellant's representative appeared before the respondent and disclosed all the material facts necessary for the assessment, besides submitted 12th Annual Report which disclosed the manner in which the Forex Loss was treated. As there are transactions made by the appellant outside India, the case was referred to Transfer Pricing Officer, who on scrutiny of the documents passed an order dated 06.12.2012 vide order No.S-605/TPO-VI/AY2009-2010 clearing the return filed by the appellant and made no adjustments to it. Subsequently, the respondent passed the assessment order on 08.02.2013 accepting the income declared by the appellant.



W.A.No.2691 of 2021

6.3. Be that as it may, after seven years, the appellant received a notice dated 10.03.2016 under Section 148 of the Act, to which, they filed a detailed objection on 08.09.2016 and supplementary objection on 21.09.2016, which were rejected by the respondent, by order dated 26.09.2016. Challenging the same, the appellant preferred WP.No.35924 of 2016, which was dismissed, by the order impugned herein.

7.It is an admitted fact that the respondent passed the assessment order in respect of the appellant for the assessment year in question, on 08.02.2013. However, the same was reopened by issuing notice dated 10.03.2016 under section 148 of the Act, to which, the appellant filed its detailed objections. But, the said objections were rejected by order dated 26.09.2016 by the respondent.

8.The learned counsel for the appellant, while raising many grounds assailing the notice issued by the respondent under section 148 and the order impugned herein, has submitted that the learned Judge having noticed that the appellant did not suppress any material particulars, ought to have quashed the notice issued by the respondent for reopening the assessment already completed and allowed the writ petition filed by the appellant, whereas the



W.A.No.2691 of 2021

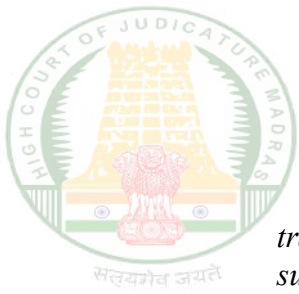
learned Judge failed to do so. The learned counsel further submitted that the appellant had furnished all the necessary material facts with the supportive documents before the assessing officer, who did not properly appreciate the same and hence, the matter may be remanded to him for fresh consideration.

9.The allegation so raised against the assessing officer was refuted on the side of the respondent. According to the learned senior panel counsel, the respondent has reopened the assessment in accordance with the provisions of the Act. However, he has no serious objection for fresh consideration of the matter by the assessing officer.

10.It could be seen from the order impugned herein that the learned Judge after analysing the legal position *qua* reopening the assessment, has categorically opined that the appellant has produced all the material facts and evidences, however, the assessing officer in the original assessment order dated 08.02.2013, has not considered many details and passed the said order in a cryptic manner. The relevant passage of the same is profitably extracted below:

"40. In this context, this Court is of an opinion that the petitioner has produced all the material facts and evidences. However, the Assessing Officer in the original assessment order dated 08.02.2013, not considered many such details and passed an assessment order in a cryptic manner.

From and out of such an assessment order, the respondent could able to



W.A.No.2691 of 2021

WEB COPY

trace out certain under assessment and such income has been made the subject of excessive relief under the Income Tax Act or excessive allowance under the Act has been computed. In view of the fact that the case of the petitioner is falling under the deemed cases, where income chargeable to tax has escaped assessment and such intricacy of under assessment and the excess relief or excess allowance or otherwise would be falling under the condition that the petitioner has failed to disclose fully and truly. Thus, it is necessary that the reassessment proceedings must go on. The petitioner/ assessee has to avail the opportunity to be provided to defend their case with regard to the allegations of under assessment or excessive relief or otherwise and co-operate for the early completion of the reassessment proceedings. What is necessary for arriving at a conclusion is that where there has been such non-disclosure of primary facts, which has escaped assessment of income in the assessment would be sufficient for conferring jurisdiction on the Assessing Officer to reopen the assessment. As held repeatedly, escapement of assessment is the primary factor to be considered and such escaped assessment occurred due to any one of the reasons enumerated under Section 147 of the Income Tax Act."

Having observed so, the learned Judge ought to have set aside the notice for reopening the assessment and remanded the matter to the assessing officer for fresh consideration. On the other hand, it was erroneously concluded that it is a deemed case where income chargeable to tax has escaped assessment and hence, the reassessment proceedings must go on.

11. In view of the above, this court, without expressing any opinion on the merits of the case, is inclined to set aside the orders impugned herein as well as in the writ petition and are accordingly, set aside. Consequently, the matter is remanded to the assessing officer to decide the decision for reopening the assessment under Section 147 of the Act, afresh, by passing a speaking order, after considering all the documentary evidence and materials placed by the appellant, without being influenced by any observations made by the



W.A.No.2691 of 2021

learned Judge in the impugned order dated 02.09.2021 in WP No. 35924 of

WEB C 2016.

Such an exercise shall be completed by the Assessing Officer, after providing an opportunity of being heard to the appellant, within a period of eight weeks from the date of receipt of a copy of this judgment.

12.This Writ Appeal is disposed of in the above terms. No costs.

Consequently, connected miscellaneous petition is closed.

(R.M.D., J.) (J.S.N.P., J.)

30.03.2022

rsh/gba

Index : Yes / no

Internet : Yes / No

To

Deputy Commissioner of Income Tax,
Corporate Circle VI - 2,
7th Floor, New Block, Room 705,
121, MG Road, Nungambakkam,
Chennai – 600 034.



WEB COPY



W.A.No.2691 of 2021

R.MAHADEVAN, J.
and
J.SATHYA NARAYANA PRASAD, J.

rsh/gba

WA No. 2691 of 2021

30.03.2022