M/S.Mavis Satcom Ltd vs Deputy Commissioner Of Income-Tax on 7 June, 2010

Author: P.Jyothimani

Bench: P.Jyothimani

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED:07.06.2010
CORAM:
THE HON'BLE MR.JUSTICE P.JYOTHIMANI
WRIT PETITION Nos.27357, 27358/2009 and 810 and 811/2010 and connected miscellaneous pet
..

M/s.Mavis Satcom Ltd.,
rep. By its Managing Director
Mrs.Prabha Sivakumar
48 NP, Jawaharlal Nehru Salai
Ekkattuthangal
Chennai 600 032. .. Petitioner in all
the Writ Petitions.

vs.
Deputy Commissioner of Income-tax
Media Circle I
121 Mahatma Gandhi Road
Nungambakkam
Chennai 600 034. .. Respondent in all
the Writ Petitions.

Writ Petitions filed under Article 226 of the Constitution of India praying for issuance

For petitioner : Mr.V.Ramachandran,Sr.Counsel
for Dr.(Mrs.) Anitha Sumanth

For respondent : Mr.K.Ramasamy
..

COMMON ORDER

The writ petitions, W.P.Nos.27357 and 27358 of 2009 are filed by the petitioner challenging the order of the respondent, the Deputy Commissioner of Income-tax relating to the assessee company s objection for reopening of assessment under section 147 of the Income-tax Act, 1961 for the assessment years 2003-04 and 2004-05 and the writ petitions, W.P.Nos.810 and 811 of 2010 are filed challenging the subsequent assessment orders passed for the said assessment years 2003-04 and 2004-05.

2. The writ petitioner, which is a company registered under the provisions of the Indian Companies Act, carrying on the business of operating a Television Network, is stated to have filed its return for the assessment years 2003-04 on 1.12.2003 declaring Nil income and that was accepted by the respondent in the intimation dated 18.11.2004. Thereafter, the statutory notice under section 143(2) of the Income-tax Act,1961 (in short, the Act) was issued along with the questionnaire under section 142(1) of the Act seeking particulars.

a) It is stated that the petitioner furnished the details and thereafter the respondent completed the assessment under section 143(3) of the Act, by order dated 30.3.2006, by raising a demand of Rs.51,408/- which was paid by the petitioner.

b) Again, in respect of the assessment year 2004-05, the petitioner filed its return on 1.11.2004, relating to which an intimation under section 143(1) of the Act was sent accepting the return and determining a sum of Rs.48,159/- as being payable, in the communication dated 24.8.2005 and the said amount was also paid by the petitioner.

c) However, the petitioner received notice under section 148 of the Act dated 19.12.2008 for the assessment year 2003-04 and dated 5.12.2008 for the assessment year 2004-05, calling upon it to file its return of income for the assessment years within 30 days, on the basis that there is reason to believe that certain income chargeable to tax had escaped assessment in respect of these two assessment years.

d) The petitioner filed reply on 9.1.2009, requesting the respondent to treat the returns filed earlier for both the assessment years as filed in response to the notice under section 148 of the Act. In respect of the assessment year 2003-04, the petitioner has clearly stated that the proceedings were fully scrutinized and after the relevant assessment year, four years have passed and therefore, as per the Proviso to section 147, such proceedings cannot be initiated except when the escapement of income resulted in the failure to make full and complete disclosure by the assessee. The petitioner has also requested for a copy of the reasons for such notice issued under section 148 of the Act.

e) Thereafter, the respondent for the year 2003-04, in the reply dated 16.1.2009, gave reason stating that the expenditure in the purchase of copyrights for Rs.2,95,63,495/- is capital in nature, since it has the effect of enduring benefit of re-telecast over many years and the expenditure is to be treated as capital in nature and is to be only allowed depreciation in the year of purchase. That was reflected in Schedule-3 to P &

L account of the company.

f) Again, for the year 2004-05, the reasons adduced are that the company claimed a sum of Rs.6,20,00,017/- as purchase amount of copyrights in the schedule-J to P & L account and the petitioner purchased the right of feature films and other programmes for broadcasting and though the petitioner claimed the whole of expenses as deduction for the year, the films have the value of reuse and re-telecast over many years and therefore, the expenditure is to be treated as capital in nature and is to be allowed depreciation only as deduction in the year of purchase. According to the respondent, these were the reasons for the purpose of arriving at the conclusion that there was escaped assessment for the years 2003-04 and 2004-05.

g) It is the case of the petitioner that the assessing authority has in fact considered the claim in respect of purchase of copyrights including all particulars relating to the purchase of feature films and other programmes which would be re-telecast and the particulars were given in complete form in the profit and loss accounts. In fact, the petitioner claimed the said amount as revenue expenditure and it is stated that the respondent raised the same issue in the course of original assessment proceedings and the same was explained to the effect that the films would be taken as stock-in-trade and could not be classified as fixed assets or as copyrights and it was, only after the petitioner filed a detailed reply to the respondent during the original assessment proceedings on 30.12.2005 and 12.1.2006, the original assessment was adopted accepting the claim of the petitioner as tenable and according to the petitioner, the present reassessment proceedings have been effected by change of opinion by the same assessing authority and it is hit by the proviso to section 147 of the Income-tax Act.

h) The petitioner filed objections to the reasons recorded by the assessing authority for reassessment under section 148(1) of the Act by communication dated 30.1.2009, filed before the respondent on 4.12.2009. It is sated that the assessing authority during the month of February, 2007 requested certain particulars in person on the basis of audit objections for which a reply was sent by the petitioner on 1.2.2007. It is stated that the objections filed by the petitioner were not adjudicated by the respondent with the result the petitioner was under the impression that the respondent accepted the objections raised by the petitioner in the notice issued under section 148 of the Act. It was, after 10 months, the petitioner received a notice under section 142(1) of the Income-tax Act for continuing the reassessment proceedings and the petitioner wrote a letter to the respondent on 15.10.2009 stating that the objections have to be adjudicated by way of a speaking order, followed by the assessment proceedings.

i) It is stated that the petitioner thereafter received a letter from the respondent rejecting the objections against reopening of assessment on 6.11.2009 for the assessment year 2003-04 and on 4.11.2009 for the assessment year 2004-05. In the

said letter, according to the petitioner, the respondent has not denied the statement of the petitioner that the assessment was made on the basis of audit objections and there was a delay of 10 months.

j) It is stated that when notices were issued under section 148 of the Act on 5.12.2008 and 19.12.2008 in respect of the said assessment years for reassessment, they were challenged before this Court and this Court, by order dated 10.12.2009 directed the petitioner to file a detailed objections before the assessing officer who should pass appropriate orders. It was, only thereafter, the petitioner filed the objections on 16.12.2009 and appeared before the assessing authority on 18.12.2009 and the respondent passed orders on 18.12.2009 rejecting the objections raised by the petitioner.

3. The said orders are being challenged as stated above in W.P.Nos.27357 and 27358 of 2009 on various grounds including that the orders were passed with a total non-application of mind; that the orders were passed based on audit objections which were not coming within the purview of section 147 of the Income-tax Act; that what was objected to by the audit party was only a point of law and not a factual matter and therefore, the question of reassessment would not arise; that the original assessment for the year 2003-04 was completed after scrutiny on 30.3.2006 and for the year 2004-05 it was completed by way of intimation dated 24.8.2005 and there was no failure on the part of the petitioner in disclosing all material facts and in fact, the petitioner filed particulars relating to its claim as revenue expenditure under section 37 of the Act and there was no failure of disclosure; that in respect of assessment year 2003-04, the reassessment proceedings are barred by section 147 of the Act, since proviso to section 147 provides that any action initiated beyond a period of four years must be only in cases where there was failure to disclose, that the impugned orders were passed based on audit objections which cannot form the basis, and that as it was held by the Supreme Court in Indian and Eastern Newspaper Society vs. Commissioner of Income-Tax [119 ITR 996] there was delay between the filing of objections on 30.1.2009 and the passing of orders by the respondents rejecting the objections, apart from raising many other grounds.

4. It was, thereafter, the respondent posted the matter for hearing on merits on 23.12.2009 and the petitioner filed a detailed reply to the effect that the films and serials purchased by the petitioner would amount to revenue items and once the films were telecast, they seized to have any value and they were purchased as stock in trade. However, notwithstanding the submissions made by the petitioner, the respondent completed the assessment on 29.12.2009 and passed orders for the assessment year 2003-04 computing tax payable for the said year as Nil after setting off the loss of previous years and in respect of the assessment year 2004-05, the assessing authority computed the tax payable at Rs.2,54,21,877/- as additional tax and the said orders of assessment for the years 2003-04 and 2004-05 are challenged in W.P.Nos.810 and 811 of 2010 on various grounds as stated in above said writ petitions.

5. In the counter affidavit filed by the respondent in W.P.Nos.27357 and 27358 of 2009, it is stated that in the order passed by this Court in W.P.Nos.24370 and 24371 of 2009 dated 10.12.2009 there was a direction to the authority to pass orders stating that the Court is not inclined to interfere with

the notice issued calling upon the petitioner to give explanation and it was, as per the direction, the petitioner filed objections on 16.12.2009 and thereafter, an opportunity was given to the petitioner on 18.12.2009 and after hearing the petitioner, adjudication order was passed on 18.12.2009 and further opportunity was given to the petitioner on 23.12.2009 and assessment order was finally passed on 29.12.2009 and the adjudication order as well as assessment order was passed as per the law laid down by the Supreme Court in GKN Driveshafts (I) Ltd. V. ITO & others (259 ITR 19) and therefore, it is stated that inasmuch as the assessment orders were passed, W.P.Nos.27357 and 27358 of 2009 have become infructuous and as far as assessment orders challenged in W.P.Nos.810 and 811 of 2010 are concerned, as per section 246A of the Income-tax Act, the petitioner s remedy is to file a statutory appeal.

6. In respect of W.P.Nos.810 and 811 of 2010, in the counter affidavit filed by the respondent it is stated that the filing of writ petitions against the orders of assessment is not maintainable and the petitioner has got appeal remedy available under the Income-tax Act, relying upon various judgments of the Supreme Court including the law laid down in Dr.K.Nedunchezhian vs. Deputy Commissioner of Income-tax [279 ITR 342].

a) It is stated that the petitioner is a satellite broadcasting company running a T.V. channel in the name, M/s.Jaya TV, whose primary business is to telecast programmes through satellite and the petitioner is engaged in the purchase of films and serials and that amounts to sale of time slots for broadcasting. It is stated that the assessee claimed the purchase of copyrights on films as revenue expenditure and according to the respondent, it should be treated as capital expenditure and therefore, there was willful evasion of tax by claiming the same as revenue expenditure.

b) Again, when notice was issued for reassessment, this Court passed orders on 10.12.2009 in the writ petitions filed by the petitioner earlier permitting the petitioner to submit explanation and it is stated that after the order was passed by this Court on 10.12.2009, the respondent issued a letter to the assessee to file objections on 15.12.2009 and posted the case for hearing on 18.12.2009 and on 16.12.2009 the petitioner/assessee filed objections and a full hearing was given on 18.12.2009 and a speaking order of adjudication was passed rejecting the objections filed by the petitioner against the notice issued.

c) Thereafter, the respondent issued a letter to the petitioner on 21.12.2009, giving opportunity to the petitioner on 23.12.2009, on which date the assessee made a submission and the case was heard and ultimately, the impugned order was passed on 29.12.2009 under section 143(3) of the Income-tax Act and therefore, the principles of natural justice have been fully followed in respect of adjudication as well as subsequent assessment orders.

d) It is stated that for the assessment years 2003-04 and 2004-05, the assessment was reopened as per section 147 of the Act after recording reasons for initiating

proceedings under section 148 of the Act and the Commissioner of Income-tax gave his approval for the year 2003-04 on 10.12.2008 since for the year 2003-04 it was more than four years to take steps and as far as the year 2004-05 is concerned, it was within four years for which the approval of the Commissioner of Income-tax was not required.

e) It is also denied that the assessment was reopened on the basis of audit objections and the audit objections which were raised were incidental and the same were not the only reason for reopening the assessment under section 147 of the Act and for reopening, there was a reason to believe that the income had escaped assessment due to the failure of the assessee. It is stated that the assessment for the year 2003-04 was completed under section 143(3) on 30.3.2006 and since true and correct facts were not disclosed by the assessee, the assessment was reopened as per proviso to section 147 of the Act and it was due to the failure on the part of the assessee to disclose fully all material facts for completion of assessment and the reasons for reopening the assessment were communicated to the assessee by letter dated 16.1.2009 and for the assessment year 2004-05, the assessment was reopened after recording reasons.

f) It is also the case of the respondent that in Indian and Eastern Newspaper Society v. CIT [119 ITR 996], the Supreme Court held that the assessment cannot be reopened on the basis of audit objection when a question of law was involved, but, on the facts and circumstances of the case, there was no question of law involved and it was the petitioner who did not disclose true particulars. It is stated that as per the judgment of the Supreme Court in CIT v. PVS Beedies Pvt. Ltd. [237 ITR 13], reopening of cases under section 147 on the basis of factual information is perfectly valid in law.

g) It is denied that the respondent could not pass adjudication order on 18.12.2009 on the very same date when the hearing was made. It is stated that on 16.12.2009 the objections were made and on 18.12.2009 there were no fresh objections made by the petitioner and therefore, the orders rejecting the objections were passed on 18.12.2009 and thereafter, final orders were passed on 29.12.2009 and it is stated that the respondent followed meticulously various provisions of the Income-tax Act, especially sections 147 and 148 of the Act and since the process of law has been followed and as against the order of assessment, there is an appeal remedy available to the petitioner before the Commissioner of Income-tax (Appeals) and a further appeal remedy before the Income-tax Appellate Tribunal, bye-passing the same, the writ petitions being filed are not maintainable. It is stated that the filing of successive writ petitions is an abuse of process of Court and in this regard, the respondent would rely upon the judgment of the Supreme Court in State of Maharashtra vs. Captain Buddhikota Subha Rao [AIR 1989 SC 2292].

7. Mr.V.Ramachandran, learned senior counsel appearing for the petitioner would submit that as far as the assessment year 2003-04 is concerned, the proceedings initiated after a period of four years are not valid in law, and it is his case that when the petitioner s returns were submitted, there was a total disclosure about the facts regarding copyrights of the films as well as serials and the petitioner claimed the expenditure incurred for obtaining the copyrights as revenue expenditure and that was originally accepted by the assessing authority, but subsequently, reassessment proceedings were initiated by the same authority, the respondent herein by changing his view that it should be capital expenditure and the mere change in view by the authority in respect of legal issue does not mean that there was any suppression on the part of the petitioner. He would rely upon the judgment in GKN Driveshafts (India) Ltd., vs. Income-tax Officer [259 ITR 19].

a) It is submitted that the adjudication order dealing with the objections against the notice issued for reopening the assessment under section 147 of the Act came to be passed on 18.12.2009, especially when the respondent issued notice on 15.12.2009 giving one week s time and without even waiting for one week s time, the adjudication order came to be passed on 18.12.2009 itself. By relying upon the judgment in S.Velu Palandar vs. Deputy Commercial Tax Officer, Thanjavur II [83 ITR 683], he submitted that personal hearing was not given and against the order dated 18.12.2009, there is no appeal remedy available.

b) It is his submission that the proviso to section 147 has not been complied with. It is stated that there is no reason recorded for the purpose of reopening the assessment. It is submitted that the audit objection, which has not been denied, is stated to be the reason, but the audit objection cannot be a ground for reopening the assessment. He would rely upon the judgment in Indian and Eastern Newspaper Society vs. Commissioner of Income-tax, New Delhi [119 ITR 996]. It is his submission that when the adjudication order itself is not valid in law, against which no appeal remedy is provided, the consequential assessment order passed cannot be said to be valid in law.

8. On the other hand, it is the contention of the learned Senior Central Government Standing counsel that in the earlier writ petitions filed in W.P.Nos.24370 and 24371 of 2009, the petitioner raised the same objection and the said writ petitions were dismissed, by order dated 10.12.2009 by directing the petitioner to give his objections to the authorities and thereafter, the objections were given on 16.12.2009 and when the impugned order of adjudication came to be passed, there was no submission on behalf of the petitioner and therefore, it is his contention that sufficient opportunity was given to the petitioner before the order of adjudication came to be passed and there was no irregularity.

a) It is his submission that inasmuch as the final assessment orders have been challenged in W.P.Nos.810 and 811 of 2010, the writ petitions in W.P.Nos.27357 and 27358 of 2009 have become infructuous. He would submit that on the facts of the present case, the audit objection is not the only reason for the purpose of issuing reassessment notice. It is his submission that when the audit objection is incidental,

> it cannot be said that the reopening of assessment is invalid. It is submitted that when admittedly for the assessment year 2004-05 the adjudication proceedings started within the time stipulated in section 147 of the Act, the remedy available to the petitioner is only to file an appeal and therefore, the writ petitions are misconceived.

9. I have heard the learned senior counsel appearing for the petitioner and the learned Senior Central Government Standing counsel and given my anxious thoughts to the issues involved in these cases.

10. Before going into the legal submissions of the learned counsel for the respective parties, it is relevant to point out some of the facts which are almost admitted. For the assessment year 2003-04, the assessee/petitioner filed its return on 1.12.2003 declaring Nil income and the said assessment was processed on 18.11.2004 and completed as per section 143(3) of the Income-tax Act on 30.3.2006, accepting the income returned by the assessee. As it is seen in the reasons given by the respondent for reopening, the petitioner disclosed in Schedule-J to profit and loss accounts that the company purchased copyrights for Rs.2,95,63,495/- and claimed it as revenue expenditure. It was accepted by the respondent while passing the assessment order dated 30.3.2006 for the assessment year 2003-04.

11. Likewise, in respect of the assessment year 2004-05, the petitioner filed its return on 1.11.2004 by declaring a total income of Rs.2,48,01,610/- and the same was processed under section 143(1) of the Act on 24.8.2005 accepting the return. In that year, as it is seen in the reasons adduced for reopening, the petitioner claimed Rs.6,20,60,017/- as purchase money of copyrights in schedule-J to the profit and loss accounts. The said purchase was in respect of feature films and other programmes for broadcasting and the same was claimed as revenue expenditure deductable for the said year.

12. The claim of deduction for the above said assessment year made by the petitioner appears to be under section 37(1) of the Income-tax Act which is as follows:

> " 37.(1) "Any expenditure" (not being expenditure of the nature described in sections 30 to 36 and not being in the nature of capital expenditure or personal expenses of the assessee, laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head "Profits and gains of business or profession."

{Explanation.- For the removal of doubts, it is hereby declared that any expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law shall not be deemed to have been incurred for the purpose of business or profession and no deduction or allowance shall be made in respect of such expenditure.]"

13. Therefore, it is clear that for the assessment year 2003-04, the respondent assessing authority had reason to believe that the returns were inadmissible, only after issuing notice under section

143(2) of the Income-tax Act and passing final orders of assessment under section 143(3) on 30.3.2006, upon hearing the party and taking into account the particulars furnished by the assessee. In respect of assessment year 2004-05, the respondent assessing authority was satisfied about the returns filed by the petitioner and issued communication accepting the return filed by the petitioner under section 143(1) of the Act and then, had reason to believe that the income had escaped assessment.

14. In respect of the incomes for which assessments was made either under section 143(1) or under section 143(3) of the Act, the assessing authority is empowered or entitled to assess or reassess such income chargeable to tax which had escaped assessment and which comes to his notice subsequently in the course of proceedings and to recompute, of course, subject to sections 148 and 143 of the Act which contemplate issuance of notice in respect of escaped income, the time limit for issuance of such notice and time limit for completion of assessment or reassessment. For better appreciation of the issue involved in this case, it is necessary to reproduce section 147 of the Act as follows:

> Section 147. Income escaping assessment.
>
> If the (Assessing) Officer (has reason to believe) that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year):
>
> Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under Section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year.
>
> Provided further that the Assessing Officer may assess or reassess such income, other than the income involving matters which are the subject matters of any appeal, reference or revision, which is chargeable to tax and has escaped assessment.] Explanation 1.- Production before the Assessing Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of the foregoing proviso.

Explanation 2. - For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely:-

(a) where no return of income has been furnished by the assessee although his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax;

(b) where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing Officer that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return;

(c) where an assessment has been made, but -

(i)income chargeable to tax has been underassessed; or

(ii)such income has been assessed at too low a rate; or

(iii)such income has been made the subject of excessive relief under this Act; or

(iv)excessive loss or depreciation allowance or any other allowance under this Act has been computed.] Explanation 3.- For the purpose of assessment or reassessment under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice, subsequently in the course of the proceedings under this section, notwithstanding that the reasons for such issue have not been included in the reasons recorded under sub-section (2) of Section 148.]"

15. The first proviso to section 147 says that in cases where assessment has been completed as per section 143(3) after notice to the assessee, if the assessing authority has reason to believe that the return submitted by the assessee is inadmissible, after such orders were passed, no action shall be taken for reassessment after expiry of four years from the end of the relevant assessment year, unless the escaped assessment is due to the reason of failure on the part of the assessee. As far as the assessment year 2003-04 is concerned, as stated above, the assessment was completed by the respondent on 30.3.2006 and notice for reopening the assessment under section 148(1) of the Act, pursuant to the decision taken by the assessing authority under section 147, came to be issued on 19.12.2008 as per proviso to section 147 of the Act. The end of the relevant assessment year 2003-04 is 31.3.2004 and the case of the petitioner is that in respect of assessment year 2003-04, reassessment notice issued under section 148(1) of the Act is clearly beyond four years from the end of relevant assessment year and therefore, as per the proviso to section 147, the reopening can be effected only if the escapement of income for such assessment year was due to the failure on the part of the assessee to make return under section 139 of the Act.

16. According to the learned senior counsel, inasmuch as it is not the case of the respondent that there has been failure on the part of the assessee to make return with disclosure under section 139 of the Act, the proceedings initiated for the assessment year 2003-04 under sections 147 and 148 of the Act are barred. In the reasons given for reopening, the assessing authority has stated as follows:

> " It is noted from the Schedule J to P&L account that the company has purchased copy rights for Rs.2,95,63,495/-. This expense is capital in nature since the rights so purchased have an enduring benefit of re-telecast over many years. The revenue realised and admitted out of these telecast in the year of purchase are very minimal. The worth of these copy rights are earned out of exploitation over many years. As such, the expenditure is capital in nature and is to be only allowed depreciation in the year of purchase. Hence, I have reasons to believe that the income has escaped assessment."

17. As it is seen in the reasons given by the assessing authority, it is not stated that the escaped assessment for the assessment year 2003-04 was due to the failure on the part of the assessee. The assessing authority, who had earlier accepted the stand of the petitioner that the purchase amount in respect of copyrights for Rs.2,95,63,495/- is revenue expenditure deductible under section 37 of the Act and completed the assessment under section 143(3) of the Act on 30.3.2006, now has decided that the said purchase amount in respect of the said copyrights should be treated as capital expenditure and that is not liable for exemption and issued notice for reopening the assessment.

18. In respect of assessment year 2004-05, as stated above, there was no assessment order passed under section 143(3) of the Act, but the assessing authority accepted the return, processed the same under section 143(1) of the Act and intimated the same on 24.8.2005. It is, in respect of the said year, the reopening process has been commenced under section 147 of the Act and notice issued on 5.12.2008 under section 148(1) of the Act. As far as the assessment year 2004-05 is concerned, it is not even the case of the petitioner that it is barred by the proviso to section 147 of the Act. But the case of the respondent is that when the notices were issued under section 148(1) of the Act for the assessment years 2003-04 and 2004-05 on 19.12.2008 and 5.12.2008 respectively, after objections were received from the petitioner for reopening, the same were disposed of by the assessing authority on 6.11.2009 and 4.11.2009 respectively. The said orders passed by the assessing authority on 6.11.2009 and 4.11.2009 are as follows:

> " Please refer to the above.
>
> Assessment for the Assessment year 2003-04 has been reopened by the Assessing Officer after recording the reasons in writing. As per your request, the reasons recorded for reopening the assessment has been communicated to you vide this office letter dated 16.01.2009.
>
> Since the assessment has been reopened within the provisions of section 147 of the Income Tax Act, your objection for reopening of the assessment is not tenable and is hereby rejected."

" Please refer to the above.

Assessment for the Assessment year 2004-05 has been reopened by the Assessing Officer after recording the reasons in writing. As per your request, the reasons recorded for reopening the assessment has been communicated to you vide this office letter dated 16.01.2009.

Since the assessment has been reopened within the provisions of section 147 of the Income Tax Act, your objection for reopening of the assessment is not tenable and is hereby rejected."

19. Since the petitioner was not satisfied with the orders of rejection of objections against the notice issued under section 148(1) of the Act, on the basis that they did not contain any reason, that there was non-application of mind and that they were non-speaking orders without dealing with the objections raised by the petitioner, the petitioner filed W.P.Nos.24370 and 24371 of 2009 challenging the said rejection orders dated 6.11.2009 and 4.11.2009 respectively. The petitioner has taken a definite stand in those writ petitions that the reopening notice was issued under section 148(1) of the Act on the basis of audit objection, by relying upon the judgments of the Supreme Court reported in Commissioner of Income-tax vs. Hackbridge-Hewittic & Easum Ltd., [154 ITR 378] and Commissioner of Income-tax vs. E.I.D.Parry (India) Ltd., [230 ITR 70].

20. It was the specific stand of the respondent assessing authority in those writ petitions that the orders of rejection of objections are appealable under section 252 of the Act to the Commissioner of Income-tax (Appeals) and further appeal to the Income-tax Appellate Tribunal under section 260A of the Act and even thereafter, further remedy is available under section 260B of the Act. However, by common order dated 10.12.2009, this Court, without going into the legality or otherwise of the said rejection orders passed for the assessment years 2003-04 and 2004-05 dated 6.11.2009 and 4.11.2009 based on the notices issued under section 148(1) of the Act on 19.12.2008 and 5.12.2008 respectively and taking note of the fact that the matter was posted before the assessing authority for hearing on 14.12.2009, directed the assessing authority to pass orders by giving one week s time to the petitioner to give explanation from 10.12.2009 and after considering the explanation, to pass orders in accordance with law. The operative portion of the order is as follows:

" 5. Heard the parties on both the sides. This Court does not want to go into the correctness of the reasons mentioned for issuance of notices impunged herein. As rightly pointed out by the learned counsel appearing for the respondent, the petitioner after receiving the impugned notices have appeared before the assessing officer and obtained further time to submit explanation. Now the matter is posted for further hearing on 14.12.2009. Therefore, having seen that the matter is posted for hearing before Assessing Officer on 14.12.2009, this Court is not inclined to interefere with the notices which have called upon the petitioner to give explanation. Therefore, this Court, to meet the ends of justice, one week time is granted from today (10.12.2009) to file a detailed explanation before the Assessing officer. Till then the respondent will not pass any final order. After considering the explanation which

> will be given within one week from today, it is open for the respondent to consider and pass appropriate orders in accordance with law. With this observation, these writ petitions are dismissed. ....."

21. Pursuant to the said direction, it is seen that the respondent, by letter dated 15.12.2009, asked the petitioner to file objections on or before 16.12.2009 and also directed the petitioner to appear on 18.12.2009 at 3.00 p.m. The operative portion of the letter is as follows:

> In view of the Hon'ble High Court order, you are hereby requested to file your objections, if any for the reopening u/s 148 of the I.T.Act, 1961 on or before 16.12.2009 and appear before the undersigned for a hearing on 18.12.2009 at 03.00 p.m.

22. On 16.12.2009, the petitioner gave a detailed objection in respect of both the assessment years 2003-04 and 2004-05, in the last paragraph specifically requesting to pass a detailed speaking adjudication order as per the direction of the Supreme Court in GKN Drive Shafts case [259 ITR 11]. The said portion of objection of the petitioner is as follows:

> In the event you are not inclined to accept the above submissions, a detailed speaking adjudicating the above objections may be passed as directed by the Hon'ble Supreme Court in the case of GKN Drive Shafts (259 ITR 19), prior to taking the matter up for assessment on merits. A personal hearing is also sought in the matter.
> Thereafter, the respondent passed the final orders of rejection of objections made by the petitioner against the notices issued for reassessment as per sections 147 and 148(1) of the Act.

23. A reference to the impugned orders of rejection shows that the respondent assessing authority has in fact considered every one of the objections/issues raised by the petitioner. While dealing with the proviso to section 147 of the Act that notice for reopening was given after four years from the end of relevant assessment year, it is stated that beyond four years, the matter had to be reopened in respect of assessment year 2003-04 due to the reason that the petitioner had not disclosed about the copyrights as intangible assets as required under Accounting Standard 26 which is contemplated under section 145 of the Act. It is the stand of the assessing authority that the factual aspect had not been mentioned in the original return and therefore, notice for reopening is not hit by the proviso to section 147 of the Act.

24. It is the further case of the respondent in the impugned orders that as required under section 151(1) of the Act, since the period was more than four years, approval of the Commissioner of Income-tax was obtained. The impugned orders show that since the petitioner assessee had not furnished the particulars as required under the Accounting Standard-26 by classifying the copyrights as intangible assets and having realized that the copyrights on films give enduring benefit to the assessee over a period of several years, notices came to be issued under sections 147 and 148(1) of the Act for reopening the assessment.

25. It is no doubt true that the applicability of section 151(1) of the Act is doubtful and even then, it only results in the best judgment assessment as per the Income-tax Act. Further, the impugned orders of the respondent show that there was factual suppression which cannot be held to be a pure question of law so as to deprive the assessing authority of his right to initiate proceedings under sections 147 and 148(1) of the Act, by issuing notice. The impugned orders also refer to section 147, Explanation No.II(b) which speaks about furnishing of particulars by the assessee.

26. A further question that has been raised by the learned senior counsel for the petitioner in respect of these proceedings of adjudication is that after the order was passed by this Court on 10.12.2009, notice was issued by the respondent on 15.12.2009 directing the petitioner to submit objections on or before 16.12.2009 and to appear on 18.12.2009 and the order of the Court is to the effect that seven days time must be given and therefore, the order of the Court has not been complied with. However, a reference to the order as elicited above, makes it clear that seven days time was directed to be given from the date of order viz., 10.12.2009 and it is admitted that the petitioner itself submitted its objection on 16.12.2009 and the matter was posted for hearing on 18.12.2009 and hence, it cannot be said that the order of this Court has not been complied with. It is not the case of the petitioner that the petitioner has not been heard in person on 18.12.2009 the day on which the petitioner appeared before the authority.

27. At this stage, it is relevant to point out that as per the provisions of Income-tax Act, when action is initiated under section 147 of the Act for reassessment in respect of escaped income, section 148(1) contemplates the assessing authority to issue notice, after recording his reason for the issue of such notice, as it is seen in section 148(2) of the Act which is as follows:

> " Section 148. Issue of notice where income has escaped assessemnt.-
>
> (1) ....
>
> (2) The Assessing Officer shall, before issuing any notice under this section, record his reasons for doing so."

In fact, as stated above, the reasons for issuing such notice have already been communicated by the respondent and ultimately, after complying with such requirements under the principles of natural justice, the assessing authority passed the reassessment orders. Even though time limit has been given for the purpose of issuing notice for the relevant assessment year under section 148(1) of the Act, there is no provision stating that after objection is received, a detailed order of rejection has to be passed before passing final order of reassessment.

28. It is relevant to point out that section 153 of the Act only stipulates a time-limit for assessment and reassessment orders. Therefore, even if an order has been passed by the assessing authority rejecting the objections made against the notices issued under sections 147 and 148(1) of the Act, that rejection order merges with the subsequent assessment order which is passed as per section 153 of the Act. On the facts of the present case, it is clear that the impugned orders of rejection of objections which are the subject matter of challenge in W.P.Nos.27357 and 27358 of 2009 in respect

of assessment years 2003-04 and 2004-05 came to be passed by the authority only as per the direction of this Court in the order passed in W.P.Nos.24370 and 24371 of 2009 dated 10.12.2009 and not by virtue of any statutory compulsion.

29. It is also relevant to point out at this stage that even if there is any lacuna in the procedure followed by the respondent while rejecting the objections raised by the petitioner, it is not as if the petitioner is left in lurch and deprived of its right from raising such issue, and it is open to the petitioner to challenge the same, even at the time of questioning the final assessment orders passed as stated above, because the rejections orders have actually merged with the final assessment orders passed by the respondent on 29.12.2009 which are subject matter of challenge in W.P.Nos.810 and 811 of 2010.

30. Even though many legal issues are raised by relying upon various judgments of the Apex Court, questioning the procedural defects on the part of the respondent in rejecting the objections, besides the question whether the purchase of copyrights is revenue expenditure or capital expenditure and the assessing authority is entitled to reopen the assessment on such question, I am of the considered view that the said issues need not be gone into in these writ petitions, since such decision would in fact affect substantially the right of the petitioner in raising those issues in the appropriate forum. In such view of the matter, I am not expressing any opinion on the various issues raised on behalf of the petitioner, in this regard.

31. Admittedly, when the final orders of assessment were passed which are impugned in the writ petitions, W.P.Nos.810 and 811 of 2010, and it is not in dispute that the said orders of assessment are appealable to the Commissioner of Income-tax (Appeals) since the final orders of assessment were passed under section 143(3) of the Income-tax Act and appeal remedy is provided before the Commissioner of Income-tax (Appeals) as per section 246(1) of the Act and further appeal remedy is provided before the Income-tax Appellate Tribunal under section 252 of the Act.

32. The Hon ble First Bench of this Court in Dr.K.Nedunchezhian vs. Deputy Commissioner of Income-tax [(2005) 279 ITR 342 (Mad)] held that when an alternative remedy is available the writ jurisdiction under Article 226 of the Constitution of India should not be invoked and that will have greater force regarding tax proceedings, by referring to various judgments. The relevant portion of the judgment is as follows:

> " It is well settled by a series of decisions of the Supreme Court that particularly in tax matters there should be no short circuting of the statutory remedies, vide Titaghur Paper Mills Co. Ltd., vs. State of Orissa (1983) 142 ITR 663 (SC); AIR 1983 SC 603; Asst.Collector of Central Excise v. Dunlop India Ltd., (1985) 154 ITR 172 (SC); AIR 1985 SC 330, etc. It is well-settled that when there is an alternative remedy ordinarily writ jurisdiction of this court under article 226 of the Constitution should not be invoked. This principle applies with greater force regarding tax proceedings. As observed by the Supreme Court in Titaghur Papers Mills Co. Ltd., vs. State of Orissa (1983) 142 ITR 663 (SC); AIR 1983 SC 603 (page 671 of ITR):

..... Where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of.

33. In the present case, it is clear that after the rejection orders came to be passed regarding the objections raised against the notices issued under sections 147 and 148(1) of the Act, the assessing authority gave opportunity to the petitioner and passed final orders of assessment which are challenged in W.P.Nos.810 and 811 of 2010, and it cannot be stated that these orders were passed without assigning any reason or passed merely as a consequence to the rejection orders as stated above.

34. On the other hand, the impugned orders of assessment give elaborate reasons for such final orders of assessment as per section 143(3) of the Act and in such view of the matter, it cannot be said that the petitioner is not entitled to raise any objection relating to the notices of reassessment issued under sections 147 and 148(1) of the Act, at the time of challenging the final orders of assessment. The final orders of assessment have dealt with, in detail, the capital assets and stock-in-trade, by relying upon various judicial findings, especially relating to reproducing of films and serials apart from deciding about the applicability of Accounting Standard-26 in these cases and thereafter, arrived at the conclusion.

35. Certainly, as submitted by the learned Senior Central Government standing counsel, the final orders of assessment passed in these cases are appealable orders and in appeal, it is open to the petitioner to raise all objections including the objections relating to procedural defects raised regarding issuance of notice under sections 147 and 148(1) of the Act and also the defects which are pointed out by the learned senior counsel for the petitioner in the notices issued under sections 147 and 148(1) of the Act.

36. In these circumstances, leaving it open to the petitioner to work out its remedy by filing appropriate appeals as per the provisions of the Income-tax Act, the writ petitions are to be dismissed. It is relevant to point out that the final orders of assessment were passed by the respondent on 29.12.2009 and the petitioner filed the writ petitions on 18.1.2010 which are pending before this Court, and if any such appeal is filed by the petitioner against the final orders of assessment as per the provisions of Income-tax Act, in accordance with the conditions mentioned therein, within a period of ten days from the date of receipt of a copy of this order, the Commissioner of Income-tax (Appeals) shall take note of the pendency of the case before this Court and pass appropriate orders regarding entertaining the appeal as per the Income-tax Act and thereafter, proceed to decide the matter, including the question as to whether the reassessment notice as well as reassessment proceedings are based on the ground of change of opinion and all other issues which are open to the petitioner to raise regarding reassessment as well as notices for reassessment, on merits and in accordance with law, making it clear that it is open to the petitioner to raise all its objections not only regarding the impugned assessment orders passed by the assessing authority, but also against the proceedings initiated under sections 147 and 148(1) of the Act.

The writ petitions, accordingly, stands dismissed. No costs. Connected miscellaneous petitions are closed.

07.06.2010 Index :Yes Internet:Yes Kh To The Deputy Commissioner of Income-tax Media Circle I 121 Mahatma Gandhi Road Nungambakkam Chennai 600 034.

P.JYOTHIMANI,J.

P.D.Common Order in W.P.Nos.27357, 27358 of 2009 & 810 and 811 of 2010 Dated:07.06.2010