HC: Upholds reassessment as notice u/s148 to non-existent entity was rectified during proceedings

Jul 30, 2021

Vedanta Limited [TS-608-HC-2021(MAD)]

Conclusion

Madras HC dismisses writ petition against reassessment, holds proceedings to be valid since the error of issuing the notice u/s 148 in the name of a non-existent entity was rectified by the Revenue during the course of proceedings and PAN was not incorrectly mentioned; Assessee (Vedanta Limited, formerly known as M/s.Sterlite Industries (India) Limited) preferred a writ petition against the reassessment for AY 2008-09 where the notice u/s 148 was issued to the "Principal Officer, M/s Sesa Sterlite Industries (India) Limited" i.e., company that was in existence during the relevant point of time and at any point of time and contended that notice and subsequent communication was in the name of a non-existing entity which invalidates all further proceedings and the reassessment order; Assessee also submitted that the Revenue was informed about the merger of Sterlite Industries (India) Limited with Sesa Goa Limited with effect from Aug 17, 2013 in terms of the scheme of amalgamation and yet the notice was issued in the name of the non-existing entity which is a substantive error not curable u/s 292B, relied upon SC ruling in *Maruti Suzuki*; Revenue submitted that ingredients of Section 292B were met in the present case as once the amalgamation took place and the name was changed, the liability got shifted to the amalgamated entity and thus, the notice sent to the erstwhile entity cannot be invalidated merely on the ground that there was a typographical error which was subsequently corrected through letters; HC Notes that prior to 2013, Assessee's name was Sterlite Industries (India) Limited and subsequently, it was merged with Sesa Sterlite Limited and on close reading find that it was originally Sterlite Industries (India) Limited and subsequently, became Sesa Goa Limited followed by Sesa Sterlite Limited and finally, Vedanta Limited whereas Revenue issued notice in the name of 'Sesa Sterlite Industries (India) Limited' instead of 'Sterlite Industries (India) Limited'. The subsequent name of 'Sesa' was added by mistake; Holds that word 'Sesa' was not alien to the Assessee and its insertion could be construed to be a bonafide mistake committed, however, the PAN was one and the same which was accepted by the Assessee as it responded to all the letters and mistake was correct during the proceedings; Holds that where the notice was communicated to an unknown person, alien to the Assessee, then Section 292B cannot help the Revenue but where the notice was intended to be issued to a person to whom it was to be issued and such person acknowledged the PAN and responded to correspondences then there was no reason to disbelieve the Revenue that the name mentioned wrongly is a mistake to be fit within the provisions of Section 292B; Referring to SC ruling in *Maruti Suzuki*, holds, "*the principles laid down ... may not have any direct application with reference to certain facts which all are specifically established in the present case. Even the Hon'ble Apex Court in clear terms held that the application of Section 170 or 292B must be applied with reference to the facts and circumstances of each case and therefore, the mistake whether can be fit in with the provisions or not is to be considered on facts.*" Thus, dismisses writ petition, holds that there is no infirmity or perversity as such, requiring invalidation of the processes undertaken already, pursuant to the impugned notices issued under Section 148.:HC MAD

Decision Summary

The ruling was delivered by the Single Judge Bench of the High Court of Madras comprising Justice S.M. Subramaniam.

Senior Advocate R.V. Easwar and Advocates G. Baskar and M.P. Senthil Kumar appeared for the Assessee while the Revenue was represented by the Senior Standing Counsel A.P. Srinivas.

Case Background

Assessee-Petitioner, Vedanta Limited, formerly known as M/s.Sterlite Industries (India) Limited (SIIL) filed its return of income for AY 2008-09 on September 29, 2008. SIIL had merged with M/s Sesa Goa Limited

w.e.f 2013, and subsequently M/s Sesa Goa Limited was amalgamated with M/s Vedanta Limited, w.e.f April 21, 2015. A notice u/s 148 was issued in the name of Sesa Sterlite Industries (India) Limited on March 31, 2015, which was received by the Assessee-petitioner in April, 2015. Assessee contended that no such company by the name M/s Sesa Sterlite Industries (India) Limited was in existence during the relevant point of time and at any point of time. Therefore, the notice was issued by the Revenue to a non- existing person invalidating all further proceedings, and the initiation of reopening proceedings itself was untenable.

Assessee therefore challenged the assessment order on the basis that no valid notice was issued, all further proceedings were invalid and non-est in law.

Assessee's Contentions

1. The Assessee referred to the SC ruling in *Maruti Suzuki India Limited* [TS-429-SC-2019], and stated that the facts in its case and the above ruling were similar, wherein the final assessment order was issued in the name of a non-existent entity. Assessee submitted that as in the above ruling, in its case also, Revenue was informed of the amalgamation.

2. Assessee stated that in spite of the fact that the information regarding the amalgamation was communicated to the competent authorities, the proceedings were sent to a non-existing person and therefore, the very initiation and continuance in the name of a non-existing person is invalid.

3. Assessee contended that once the notice issued under Section 148 was invalid all further proceedings consequentially became invalid.

4. Assessee stated that even on being informed of the amalgamation, the mistake was not corrected by the Revenue. Therefore, such a mistake is substantive, and the error cannot be fit in with the provisions of Section 292B, and the scope of section 292B is only to correct the mistakes.

5. Assessee further contended notice was issued to a non-existent person, and Assessee was no way connected with the notice, and hence such an error could not be cured under the provisions of section 292B. Further, that it was not a mere error or typographical mistake that the notice was issued to a non-existing person repeatedly and at no point of time, Revenue initiated steps to issue proper proceedings.

Revenue's Contentions

1. Revenue contended that on passing of the final assessment order, Assessee first has to exhaust statutory appeal remedies but in the instant case, Assessee resorted to filing of the Writ Petition. It was thus submitted that the Writ was not maintainable.

2. Revenue referring to the provisions of section 170 stated that on amalgamation of a company and name change, the liability is also shifted to the amalgamated company. Therefore, notice sent to the erst-while Company cannot be invalidated merely on the ground that there was an error which was corrected subsequently by the department through subsequent letters and therefore, the mistakes/error/typographical errors are rectifiable under Section 292B.

3. It was further submitted that Assessee changed its name and registered offices on various occasions, leading to difficulty in submission of notices, and therefore related mistakes cannot be a ground to invalidate the entire reopening proceedings, which would otherwise cause greater injury to the revenue.

Key Observations

1. HC noted that purpose and object of the Act plays a pivotal role in the matter of interpretation. Mere procedural mistakes which is corrected or errors, which all are rectifiable, cannot be a ground to vitiate the entire proceedings which would undoubtedly and certainly defeat the very purpose and object of the Taxation law. (Para 9)

2. On perusal of section 292B, HC noted that the provision stipulated that intent and purpose of the Act is also to be taken note of. HC notes that impugned notice is addressed to the Principal Officer, Sesa

Sterlite Industries Limited. However, the name of Assessee, prior to 2013, was Sterlite Industries (India) Limited and subsequently, it was merged with Sesa Sterlite Limited. On close reading of the names, it was originally Sterlite Industries (India) Limited and subsequently, it was Sesa Goa Limited and thereafter, Sesa Sterlite Limited and finally, Vedanta Limited. Considering the first three names, the words are relatively closer and the respondent has erroneously stated as Sesa Sterlite Industries (India) Limited, instead of Sterlite Industries (India) Limited. (Para 9)

3. HC further noted that word 'Sesa' was not alien to the Assessee, and therefore it was a bonafide mistake on the Revenue's part. Further the Personal Account Number was accepted by the Assessee, and it responded to all letters and the corrigendum was issued. Subsequently, the mistakes in addressing the Assessee were corrected by a letter dated August 06, 2015, and proceedings were continued. (Para 9)

4. HC noted that Court has to consider the possible mistakes which would not affect the purpose and object of the proceedings, more specifically, under the provisions of the Act, as the department is normally dealing with large number of files. Only errors affecting the very provision is to be invalidated and every mistake or certain omissions cannot be construed as invalid for the purpose of continuance of the proceedings. (Para 10)

5. HC observed that in the present case, admittedly, the Personal Account Number, all along, was being mentioned correctly. It noted the possibility that the assessees, in view of change of names and registered office, probably would have filed the return of income in the changed name and the original name may be maintained in the PAN records. In other words, in the PAN records, sometimes, the original name is mentioned, as the assessee has to submit a separate application for change of name in the PAN records. (Para 10)

6. HC further stated that in case the notice was communicated to an unknown person, who was alien to the Assessee, then as rightly pointed out, the benefit of Section 292 B could not be available to the Revenue. However, if the notice was intended to be issued to a person to whom it is to be issued and such person also acknowledged the Permanent Account Number, which is rightly mentioned, and responded to the letters and notices issued by the Income Tax Department, then there is no reason to disbelieve the contentions raised on behalf of the revenue, as the name mentioned wrongly is a mistake to be fit in with the provisions of Section 292B. (Para 10)

7. With regards to Assessee's reliance on SC ruling in *Maruti Suzuki India Limited (supra)*, HC noted that the principles laid down in that case may not have any direct application with reference to certain facts which all are specifically established in the present case. It was therein that the application of Section 170 or 292B must be applied with reference to the facts and circumstances of each case and therefore, the mistake whether can fit in with the provisions or not is to be considered on facts. (Para 13)

8. HC noted that in the present case, the proceedings were continued, and the assessment order was passed and subsequently, the Writ Petitions were filed, challenging the draft assessment order as well as the final assessment order. It further noted that there was no reason to interfere with the process of reassessment already completed and the petitioner may prefer an appeal under the provisions of law. (Para 14)

Case Law Information

Taxpayer Name

- Vedanta Limited

Judicial Level & Location

- High Court Madras

Appeal Number

- W.P.No.25529 of 2015 & M.P.No.1 of 2015

Date of Ruling

- 2021-07-15

Ruling in favour of

- Revenue

Section Reference Number

- 292B
- 148

Nature of Issue

- Assessment Procedure
- Reassessment

Judges

- S.M.Subramaniam

Counsel for Tax Payer

- Mr.R.V.Easwar
- Mr.G.Baskar
- Mr.M.P.Senthil Kumar

Counsel for Department

- Mr.A.P.Srinivas