IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.10.2015

CORAM

THE HONOURABLE MR. JUSTICE R.MAHADEVAN

WRIT PETITION Nos.33156, 33157 & 8922 of 2015 and
M.P.Nos.1 of 2015 in
Nos.33156, 33157 & 8922 of 2015

Smt.K.Malathi ... Petitioner in all W.Ps

Vs.

The Income Tax Officer,
Ward - I,
Villupuram ... Respondent in all W.Ps

Prayer in W.P.No.33156/2015:- Writ petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorari calling for the records relating to the impugned order of the respondent in Pan Nil dated 25.09.2015 in which penalty under Section 271(1)(b) of the Income Tax Act has been levied and quash the same as without jurisdiction, illegal arbitrary and against the principles of natural justice.

Prayer in W.P.No.33157/2015:- Writ petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorari calling for the records relating to the impugned order of the respondent in Pan Nil dated 25.09.2015 in which penalty under Section 271(1)(c) of the Income Tax Act has been levied and quash the same as without jurisdiction, illegal arbitrary and against the principles of natural justice.

Prayer in W.P.No.8922/2015:- Writ petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorari calling for the records relating to the impugned order of the respondent in New Case/2007-2008 dated 17.03.2015 and quash the same as without jurisdiction, illegal arbitrary and against the principles of natural justice.

For Petitioner in all W.Ps : Mr.K.Soundararajan

For Respondent in all W.Ps : Mr.T.Pramod Kumar Chopda, Senior Standing Counsel

COMMON ORDER

Seeking to quash the impugned order passed by the respondent in Pan Nil dated 25.09.2015 under Sections 271(1)(b) and 27(1)(c) of the Income Tax Act respectively and the impugned order in New Case/2007-2008 dated 17.03.2015, the petitioner is before this Court with these writ petitions.

2.Heard the learned counsel for the petitioner and the learned Senior Standing Counsel appearing for the respondent.

3.The case of the petitioner is that, Mr.Pavadai Chettiar, the grand father of the petitioner purchased a house property and one Plot at Pattukottai in the year 1961 and after his demise, his legal representatives had sold the said properties and shared the money among themselves. The petitioner further submitted that based on the market value determined by the Joint Sub Registrar - II, Pattukottai, the Income Tax Officer, Ward - I(1), Thanjavur had issued notices dated 26.03.2014 and 10.07.2014 to the father of the petitioner under Section 148 of the Income Tax Act, on the basis that the capital gains were not reported to the Department. For the above said notices, the petitioner's father submitted a reply dated 27.01.2015, in which, he explained that the property belongs to eight persons. The Income Tax Officer, Ward - I(1), Thanjavur accepted the explanation of the petitioner's father and dropped his proposal. Now, the grievance of the petitioner is that the respondent issued the impugned orders thereby levying penalty against the petitioner, despite the relief granted to other legal heirs for the same set of facts.

4.The main ground raised made by the learned counsel for the petitioner is that, when the petitioner being one of the co-sharer of the properties and when the proceedings initiated by the Income Tax Officer, Ward - I(1), Thanjavur was dropped as against the co-sharers, it is not justifiable on the part of the respondent to initiate action against the petitioner in respect of capital gains from the same properties.Therefore,according to the learnedcounsel,the impugned orders are liable to be quashed.

5. The respondent has not filed any counter affidavit.

6.When the properties sold are being one and the same and the sellers are also one and the same, two different yardsticks cannot be adopted. That apart, since the issue, as far as the other owners are concerned, is one and the same, the petitioner's claim alone cannot be rejected. Without considering the said aspects, the respondent has passed the impugned orders. Hence, to give a quietus to this issue, in the interest of justice, the impugned assessment orders challenged in these writ petitions are liable to be interfered with.

7.Accordingly, the impugned orders are quashed and the matters are remitted back to the respondent for passing orders afresh on merits and in accordance with law. The said exercise shall be completed within a period of six weeks from the date of receipt of a copy of this order. The petitioner is directed to forthwith file necessary income tax returns if not filed earlier before the respondent along with the necessary documents so as to substantiate her claim.

8.With the above directions, the writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

Jbm

To

The Income Tax Officer,
Ward – I,
Villupuram

+1cc to Mr.K.Soundararajan, Advocate, S.R.No.57598
+1cc to Mr.T.Pramod Kumar Chopda, Advocate, S.R.No.57404

W.P.No. Nos.33156, 33157 & 8922/15

MP(CO)
CA(18/11/2015)