IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2016

CORAM

THE HONOURABLE Mr. JUSTICE M.DURAISWAMY

W.P.Nos.1259 and 1260 of 2016
and W.M.P.No.995 of 2016

C.B.Srinivasan [ Petitioner in both WP ]

Vs

The Deputy Commissioner of Income Tax
Non Corporate Circle-1
63, Race Course Road
Coimbatore 641 018 [Respondent in both WP]

Writ Petition No.1259/16 filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records relating to Notice under Section 148 of the Income Tax Act, 1961, issued by the respondent dated 04.12.2015 to the petitioner, PAN: AJNPS2191Q and quash the same.

Writ Petition No.1260/15 filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records relating to Communication of the respondent dated 22.12.2015 to the petitioner, PAN:AJNPS2191Q and quash the same.

For Petitioner : Mr.Niranjan Rajagopalan

For Respondent : MrT.Pramodkumar Chopda,
Sr.Standing Counsel

C O M M O N O R D E R

The petitioner has filed the writ petition in W.P.No.1259 of 2016 to issue a writ of certiorari to call for the records relating to the notice under Section 148 of the Income Tax Act, 1961(hereinafter referred to as the Act), issued by the respondent dated 04.12.2015 and to quash the same. Similarly, the petitioner has also filed the writ petition in W.P.No.No.1260 of 15 to issue a Writ of Certiorari to call for the records relating to Communication of the respondent dated 22.12.2015 and to quash the same.

2. Since the issue involved in both the writ petitions is common, the writ petitions are disposed of by this common order.

3. Heard Mr.Niranjan Rajagopalan, learned counsel for the petitioner and Mr.T.Pramodkumar Chopda, learned Senior Standing Counsel for the respondent.

4. The learned counsel for the petitioner submitted that the proceedings initiated by the respondent is without jurisdiction since there is no material which has been disclosed or available with the respondent which enables or warrants reopening of proceedings under Section 147 of the Act. Further, according to the learned counsel for the petitioner, when a return was already filed under Section 139 of the Act and no action under Section 143 of the Act has been taken, question of invocation of Section 147 of the Act does not arise. Further, according to the learned counsel for the petitioner, when the respondent has not taken any action on the earlier return filed under Section 143 (2) of the Act, the present notice issued under Section 148 of the Act is not maintainable. Further, according to him, any further proceedings can be initiated only on the return filed on 06.12.2013, assuming there is still jurisdiction and not barred by limitation.

5. Mr.T.Promodkumar Chopda, learned Senior Standing Counsel appearing for the respondent submitted that notice issued under Section 148 of the Act is perfectly correct and no notice will be issued under Section 143(2) of the Act for the return of income filed under Section 139 of the Act. Further, the learned Senior Standing Counsel submitted that non serving of notice under Section 143(2) cannot be construed as erroneous.

6. On a careful consideration of the materials available on record and the submissions made by the learned counsel on either side, as rightly pointed out by the learned Senior Standing Counsel for the respondent, it could be seen that no notice will be issued under Section 143(2) of the Act prior to the issuance of notice under Section 148 of the Act. Only after filing of return, pursuant to the notice issued under Section 148 of the Act dated 04.12.2015, the question of issuing notice under Section 143(2) of the Act will arise. When the petitioner has not submitted their return pursuant to the notice issued under Section 148 of the Act, question of issuing notice under Section 143(2) of the Act, would not arise.



7. Mr.T.Promodkumar Chopda, learned Senior Standing Counsel appearing for the respondent also relied upon a Judgment of the Hon'ble Supreme Court reported in (2003) 259 ITR 19 (GKN DRIVESHAFTS (INDIA) LTD., vs. INCOME TAX OFFICER AND OTHERS), wherein, the Hon'ble Supreme Court has held as follows:-

> " We see no justifiable reason to interfere with the order under challenge. However, we clarify that when a notice under

Section 148 of the Income-tax Act is issued, the proper course of action for the noticee is to file a return and if he so desires, to seek reasons for issuing notices. The Assessing Officer is bound to furnish reasons with a reasonable time. On receipt of reasons, the noticee is entitled to file objections to issuance of notice and the Assessing Officer is bound to dispose of the same by passing a speaking order. In the instant case, as the reasons have been disclosed in these proceedings, the Assessing Officer has to dispose of the objections, if filed, by passing a speaking order, before proceeding with the assessment in respect of the abovesaid five assessment years".

8. The ratio laid down by the Hon'ble Supreme Court in the Judgment relied upon by the learned Senior Standing Counsel appearing for the respondent squarely applies to the facts and circumstances of the case.

9. In these circumstances, I do not find any merit in the writ petitions. Accordingly, the writ petitions are liable to be dismissed and the same are dismissed. No costs. Connected miscellaneous petition is also dismissed.

rg

-s/d-
Assistant Registrar(CS-V)

True Copy

Sub-Assistant Registrar

To

The Deputy Commissioner of Income Tax
Non Corporate Circle-1
63, Race Course Road
Coimbatore 641 018

+ 1 cc to M/s.T.Pramodkumar Chopda, Advocate SR 17865

mp(co)
prk5/5 W.P.Nos.1259 and 1260 of 2016