IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.06.2016

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition No.13509 of 2016
and
W.M.P.No.11853 of 2016

Sharad Kumar ...Petitioner

Vs.

The Assistant Commissioner of Income Tax,
Non Corporate Circle 20 (1)
Room No.311, 3rd Floor,
Wanaparthy Block,
121 MG Road, Nungambakkam,
Chennai - 600 034. ...Respondent

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for records of the respondent contained in its assessment order, dated 24.03.2016, passed under Section 16 (3) read with Section 17 of the Wealth Tax Act, 1957 in PAN AASPS2554F, for the assessment year 2008-09, and to quash the same along with all consequent notices of demand, as arbitrary, unjust and consequently, to restrain the respondent or any of its subordinates, agents or any other person claiming under the respondent from reassessing the petitioner's wealth tax for the assessment year 2008-09 under section 17 of the Wealth Tax Act, 1957.

For Petitioner : Mr.Suhrith Parthasarathy
For Respondent : Mr.Swaminathan
Senior Standing Counsel
assisted by Ms.V.Pushpa

O R D E R

Heard Mr.Suhrith Parthasarathy, learned counsel appearing for the petitioner and Mr.Swaminathan, learned Senior Standing Counsel, assisted by Ms.Pushpa, learned counsel for respondent/Department.

2. This is a classical case, where, the petitioner/ assessee has been put to prejudice, on account of total non application of mind and oversight, on the part of the Assessing Officer.

3. The petitioner was assessed to wealth tax for the assessment year 2008-2009, and an order to the said effect was passed on 20.01.2014. Challenging the said order, the petitioner has filed an Appeal before the Commissioner of Income Tax (Appeals) VI, Chennai, on 14.02.2014. It is not in dispute that the Appeal is still pending. Whileso, a notice was received by the petitioner on 31.03.2015, stating that the Assessing Officer has reason to believe that the wealth, in respect of which, the petitioner was assessed to tax for the assessment year 2008-09, has escaped the assessment within the meaning of Section 17 of Wealth Tax Act, 1957 (hereinafter, referred to as 'the Act'). Therefore, the Assessing Officer proposed to re-assess the wealth tax for the said assessment year, and called upon the petitioner to deliver returns in the prescribed form of his wealth, in respect of which, the petitioner is assessable for the said assessment year. The petitioner submitted a representation on 17.04.2015, requesting to treat the returns filed on 26.04.2013, as returns in response to the notice issued under Section 17(2) of the Act, and to give reasons for re-opening of wealth tax as on 31.03.2008, as per Section 17 of the Act. In response thereto, the Assessing Officer, by reply, dated 26.08.2015, submitted reasons. On receipt of reasons, the petitioner came to know that apart from two properties, viz., Farm House at Eluru, Andhra Pradesh and other property at Chembarambakkam, two other properties were included, stating that, they are also falling within the holding of the petitioner. The petitioner submitted his objection on 08.09.2015. He also produced proof to show that one of the properties, which was mentioned, in the communication, dated 26.08.2015 belongs to his mother, and she had acquired by a sale deed, dated 05.06.1985. In respect of the property at Nawab Habibullah Avenue, the petitioner stated that it is a residential property outside the purview of levy of wealth tax.

4. Thus, what was required to be done by the Assessing Officer is to consider the objection of the petitioner, and after affording reasonable opportunity to the petitioner, should have proceeded with the matter, if at all, there were good and sufficient reasons for re-opening the assessment. Curiously enough, the impugned order of assessment does not refer to the properties, which were cited as reasons for reopening the assessment, in the communication, dated 26.08.2015, but the other two properties, viz, the Farm House at Eluru and the land at Chembarambakkam, which were already assessed to wealth tax,

were once again assessed, that too, for 96 months. This could not have been done by the Assessing Officer.

5. In the light of the above facts, it is clear that the Appeal filed by the petitioner as against the order of assessment, dated 20.01.2014, is still pending. Thus, the impugned order is outcome of the total non application of mind and patently illegal.

6. For the foregoing reasons, the Writ Petition is allowed and the impugned order stands quashed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

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To

The Assistant Commissioner of Income Tax,
Non Corporate Circle 20 (1)
Room No.311, 3rd Floor,
Wanaparthy Block,
121 MG Road, Nungambakkam,
Chennai - 600 034.

1 cc to M/s.Arun Karthik Mohan, Advocate, sr.29737

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