IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :22.12.2016

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THE HONOURABLE MR. JUSTICE RAJIV SHAKDHER

Writ Petition Nos.43982 and 43983 of 2016

and W.M.P.Nos.37799 to 37802 of 2016

Shri Ramasamy Naidu Srinivasan
[Petitioner]
NO.15, 4th Street Co-operative Colony
Mettupalayam- 641 301 Petitioner in both Wps

Vs

The Income Tax Officer
Non-Corporate Ward 3(1)
NO.63 Race Course Road
Coimbatore Respondent in both Wps

Writ petition No.43982 of 2016 has been filed under Article 226 of the Constitution of India, praying for a Writ of certiorari calling for the records of the Respondent in Notice dated 30.3.2016 issued under Section 148 of the Income Tax Act 1961 bearing PAN.CEFPS50550C and the consequential Orders dated 25.11.2016 passed by the Respondent bearing No. CEFPS0550C/ Non Corp Ward 3(1)/ 2016-17 for AY 2009-10 and quash the same.

Writ petition No.43983 of 2016 has been filed under Article 226 of the Constitution of India, praying for a Writ of certiorari calling for the records of the Respondent in Notice of the Respondent dated 17.6.2016 issued under Section 148 of the Income Tax Act 1961 bearing PAN.CEFPS50550C and the consequential Orders dated 25.11.2016 passed by the Respondent bearing No. CEFPS0550C/ Non Corp Ward 3(1)/ 2016-17 for AY 2012-13 and quash the same

For Petitioner : Mr.P.J.Rishikesh
For Respondent : Mr.T.Pramod Kumar Chopda, SSC

COMMON ORDER

1. Issue notice. Mr.T.Pramod Kumar Chopda, learned Senior Standing Counsel accepts notice on behalf of the Revenue.

2. With the consent of counsel for parties, the Writ Petitions are taken up for final hearing and disposal.

3. The petitioner, has, by virtue of these petitions, challenged two (2) orders of even date, i.e., 25.11.2016, whereby, he has been directed to show cause, as to why a sum of Rs.2,56,00,000/- and Rs.10,50,000/- respectively, should not be treated as income in the nature of trade.

4.1 Learned counsel for the petitioner says that the petitioner's assessment for the year 2009-10 and 2012-13 respectively have been opened, only on the ground that he has alleged to be a benami of, one, Shri.D.Ramgopal.

4.2 It is the submission of the learned counsel for the petitioner that insofar as Shri.D.Ramgopal is concerned, he has been assessed to tax and against the assessment orders passed, appeals have been preferred to the Commissioner, Income Tax (Appeals), which are pending adjudication.

4.3 It is therefore the submission of the learned counsel for the petitioner that Shri.D.Ramgopal, in his appeals, have not contended that, the income alleged to be earned upon sale of the said immovable properties, should be assessed in the petitioner's hands. In order to buttress the submission, learned counsel for the petitioner has drawn my attention to the grounds of appeals preferred by Shri.D.Ramgopal and the orders dated 09.08.2016, whereby, reasons were given by the revenue to re-visit the petitioner's assessments.

5. Mr.Chopda, who appears for the Revenue says that the petitioner's assessments for the years 2009-10 and 2012-13 have been re-opened on a protective basis, to avert a difficult situation, which could arise, if at some stage, Shri.D.Ramgopal were to take the stand that the subject income/capital gains should be assessed in the hands of the petitioner. In other words, learned counsel says that protective assessment in the hands of the petitioner is made, so that, the Revenue is not left without a remedy. Mr.Chopta says that clearly, there will be no tax liabiliy vis-a-vis, the petitioner, in case, such a stand is not taken by Shri.D.Ramgopal.

6. In these circumstances, I am of the view, at this stage, no interference is called for.

7. Accordingly, the Writ petitions are disposed of based on the stand before me, by Mr.Chopda, on behalf of the Revenue.

8. Resultantly, the connected Miscellaneous Petitions stand closed. However, there will be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To
The Income Tax Officer
Non-Corporate Ward 3(1)
NO.63 Race Course Road
Coimbatore

+2cc to Mr.P.J. Rishikesh, Advocate, S.R.No.74919,74920
+1cc to Mr.T. Pramodkumar Chopda, Advocate, S.R.No.74769

rsy(CO)
md(05/01/2017)

W.P.Nos.43982 and 43983 of 2016