IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.09.2018

C O R A M

THE HON'BLE Mr.JUSTICE K.RAVICHANDRABAABU

W.P.Nos.30420, 30421 of 2011, 1528 and 1529 of 2012
and
MP Nos.1 and 1 of 2011 and 1 and 1 of 2012

P.Thangaraju ...Petitioner in all W.Ps.

vs

1.The Income Tax Officer,
Ward-I(4), Gandhiji Road,
Erode.

2.The Deputy Commissioner of Income,
Tax (I/C), Central Circle-II,
Coimbatore. ...Respondents in all W.Ps.

Prayer in W.P.30420/2011:Writ petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorari to call for the records on the files of the first respondent in AFYPT 1378 K/07-08/Ward I(4)/ Erd dated 19.12.2011 and PAN:AFYPT 1378 K/I(4) / Erd dated 01.03.2011 and quash the same as being without jurisdiction and authority and contrary to the statutory provisions of the Income Tax Act, 1961 in so far as the assessment year 2007-08 is concerned.

Prayer in W.P.30421/2011:Writ petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorari to call for the records on the files of the first respondent in AFYPT 1378 K/07-08/Ward I(4)/ Erd dated 19.12.2011 and PAN:AFYPT 1378 K/I(4) / Erd dated 28.02.2011 and quash the same as being without jurisdiction and authority and contrary to the statutory provisions of the Income Tax Act, 1961 in so far as the assessment year 2008-09 is concerned.

Prayer in W.P.1528/2012:Writ petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorari to call for the records on the files of the first respondent in PAN/GIR.NO.AFYPT1378K dated 28.12.2011 and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice in so far as the assessment year 2008-09 is concerned.

Prayer in W.P.1529/2012:Writ petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorari to call for the records on the files of the first respondent in PAN/GIR.NO.AFYPT1378K dated 28.12.2011 and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice in so far as the assessment year 2007-08 is concerned.

For petitioner in all W.Ps. : Mr.Niranjan Rajagopalan For M/S.G.R.Associates

For Respondents in all W.Ps. : Mr.ANR.Jayaprathap Standing Counsel

C O M M O N O R D E R

W.P.Nos.30420 and 30421 of 2011 are filed questioning the notices dated 01.03.2011 and 28.02.2011 under Section 148 of the Income Tax Act, 1961 and the consequential proceedings dated 19.12.2011, disclosing the reasons for initiating proceedings under Section 147.

2.W.P.Nos.1528 and 1529 of 2012 are filed challenging the orders of assessment passed in respect of the Assessment Years 2007-08 and 2008-09.

3.The petitioner in all these writ petitions is one and the same.

4.Since the core issue involved in these writ petitions can be considered and decided, without touching upon the merits of the assessment, I am not going into detail to discuss the facts and circumstances warranting initiation of the impugned proceedings under Section 148 followed by passing the orders of assessment.

5.The following facts, though short, are sufficient for consideration and disposal of these writ petitions:

a) A search was conducted at the premises of one P.K.Duraisamy under Section 132 of the Income Tax Act. During the search, a sale agreement entered between the said Duraisamy and the petitioner herein dated 09.11.2006 was found in possession of the said P.K.Duraisamy. Consequently, the impugned notices under Section 148 were issued to the petitioner in respect of the above assessment years on the reason that the amount involved in the subject matter of transaction under the said sale agreement dated 09.11.2006, has escaped assessment.

b) The above notices were put to challenge before this Court in W.P.Nos.30420 and 30421 of 2011, mainly by contending that the same cannot be issued under Section 148 and on the other hand, it could be only under Section 153C of the said Act. When the above writ petitions were heard by this Court on 28.12.2011, this Court admitted the said writ petitions and granted an exparte interim order on the same day as follows:

> "Heard the learned counsel for the petitioner.
>
> Having regard to the objection raised herein with regard to the jurisdiction of the authority to issue the impugned notice under Section 148 of the Income Tax Act and also the short time limit given to the petitioner he submit his objection, this Court is extended the time till 6/1/2012 for the petitioner to submit his objections as all the grounds available including the jurisdiction of the authority concerned to pass one such notice and the correct provision of law under which the notice should be issued.
>
> Post on 11/01/2012."

However, on the very same day, the Assessing Officer passed an order of assessment and communicated the same to the petitioner. Consequently, those two assessment orders were put to challenge in other writ petitions W.P.Nos.1528 and 1529 of 2012.

6. Mr.Niranjan Rajagopal, learned counsel for the petitioner submitted as follows:

The petitioner has questioned the very jurisdiction of the Authority to issue notice under Section 147 and when such issue is raised in the above writ petitions and this Court, by entertaining those writ petitions, has granted the interim order as stated supra, the Assessing Officer is not justified in passing the order of Assessment without waiting for the petitioner to give their reply, as permitted by this Court. Therefore, the impugned orders of assessment are in violation of the principles of natural justice.

7. On the other hand, the learned Standing Counsel appearing for the respondents submitted that the notice was rightly issued under Section 148 and therefore, the Authority, who issued such notice, has absolute competency. He further submitted that the interim order granted on 28.12.2011 by this Court in W.P.Nos.30420 and 30421 of 2011 was an exparte order and therefore, the Assessing Officer cannot be found fault with in passing the impugned orders of assessment on 28.12.2011 itself, by considering the objections already available on

record. Therefore, he contended that the petitioner is not entitled to complaint as though the Assessing Officer violated the principles of natural justice.

8. Heard both sides.

9. The dispute is in respect of the Assessment Years 2007-08 and 2008-09. It is not in dispute that the petitioner has approached this Court and filed W.P.Nos.30420 and 30421 of 2011, questioning the very issuance of notices under Section 148. The objection raised by the petitioner is that the notices ought to have been issued under Section 153C and not under Section 148 of the Act.

10. Under the above circumstances, now it has to be seen what is the effect of the above referred interim order passed by this Court on 28.12.2011, while admitting those writ petitions. A careful perusal of the said interim order would undoubtedly show that this Court has extended the time for the petitioner to file their objections till 06.01.2012. Even though it was an exparte order, unless and until the same is set aside or modified, the respondents are bound by the said order. Consequently, any order passed in the meantime, even without having knowledge of the said order, has to be treated as non est, since the petitioner was entitled to file his objection till 06.01.2012. It is to be noted at this juncture that the subsequent or simultaneous order or proceedings issued by the respondents, either knowingly or unknowingly , will not make the order of this Court as infructuous. On the other hand, such subsequent or simultaneous order passed, not in consonance or in violation of the order of this Court, becomes non est.

11. Admittedly, in this case, the Assessing Officer has passed the orders of assessment on the very same day, on which the said interim order was passed. It is stated that after passing the said order, the same was despatched on the very next day. When such being the position, the orders of assessment impugned in other two writ petitions cannot be sustained, since the same were not passed in consonance with the interim order passed on 28.12.2011. Since the assessment orders were passed on the very same day and communicated to the petitioner on the very next day, the petitioner was not in a position to file their reply/objections on merits also within the time granted by this Court. It is not in dispute that the said interim order granted by this Court has not been put to challenge by the respondents by way of an appeal. On the other hand, the said order is still in force. Therefore, this Court is of the view that the impugned orders of assessment have to be set aside and the matter be remitted back to the Assessing Officer to pass fresh order of assessment, after considering the objection of

the petitioner including the issue with regard to the provision under which the notice is to be issued, as raised by the petitioner. Accordingly, these writ petitions are disposed of in the following terms:

a) W.P.Nos.30420 and 30421 of 2011 are disposed of, without expressing any view on the merits of the contentions raised therein by granting liberty to the petitioner to raise those objections, while giving his reply/objections before the first respondent;

b) W.P.Nos.1528 and 1529 of 2012 are allowed and the impugned orders of assessment are set aside without expressing any view on the merits of the assessment, only on the ground that the same was passed not in consonance with the interim order passed by this Court in M.Ps.Nos.1 and 1 of 2011 in W.P.Nos.30420 and 30421 of 2011 dated 28.12.2011;

c) Consequently, the matter is remitted back to the first respondent/Assessing Officer for redoing the assessment after getting the reply from the petitioner;

d) The petitioner is directed to make objections/reply within a period of two weeks from the date of receipt of a copy of this order by
raising all the objections including the objection raised in W.P.Nos.30420 and 30421 of 2011.

e) On receipt of such objections, the Assessing Officer shall pass appropriate orders on merits and in accordance with law within a period of four weeks thereafter.
No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1.The Income Tax Officer,
Ward-I(4), Gandhiji Road,
Erode.

2.The Deputy Commissioner of Income,
Tax (I/C), Central Circle-II,
Coimbatore.

+5ccs to M/S.G.R.Associates, Advocate Sr.60676, 61354 to 61357
+1cc to Mr.A.P.Srinivas, Advocate Sr.61101

W.P.Nos.30420 and 30421 of 2011
and 1528 and 1529 of 2012

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