IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2018

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

Writ Petition No.23440 of 2018
and
W.M.P.No.27353 of 2018

M.Kasthuri ...Petitioner

vs.

The Income Tax Officer,
Non-Corporate Ward-12(4)
Room No.223, No.16,
BSNL Building,
Greams Road,
Chennai - 600 006. ....Respondent

Prayer : Writ Petition filed under section 226 of the constitution to issue a Writ of Certiorari calling for the records of the respondent in impugned order dated 29.12.2017 together with the consequential notice of demand dated 29.12.2017 and the consequential proceedings for penalty dated 18.05.2018 and quash the same.

For Petitioner : Mr.S.Raveekumar

For Respondent : Mr.Raj Jhabak,
Standing Counsel(IT)

O R D E R

The petitioner has approached this Court and challenged the impugned proceedings namely, the order of assessment dated 29.12.2017 passed in respect of assessment year 2010-11 and the demand notice issued under section 156 of the Income Tax Act, 1961, calling upon the petitioner and 14 others to pay a sum of Rs.32,11,010/- being the tax arrears.

2. The case of the petitioner before this Court is that she

is not an assessee under the respondent and the impugned proceedings issued by treating the petitioner as one of the legal heirs of the deceased assessee, namely one Sadagopan Sulochana was also on a mistaken impression as though the petitioner is one of the legal heirs of the said deceased assessee. Therefore, she contended that the impugned proceedings issued, insofar as against the petitioner, cannot be sustained. The petitioner has specifically stated in the affidavit filed in support of the writ petition that the deceased assessee, namely Sulochala, is the sister-in-law of the petitioner's mother-in-law. She further stated that the petitioner is neither a party to the Testamentary Original Suit nor the beneficiary under the Will claimed to have been executed by the said Sulochana. She further stated that she does not come within the purview of relative as defined under section 2(41) of the Income Tax Act.

3. A counter affidavit is filed by the respondent wherein it is stated that the petitioner is residing in the same property where the deceased assessee Sadagopan Sulochana was residing at the time of her death. Therefore, it is contended by the respondent that the petitioner has clear nexus with the properties of the deceased and therefore, the initiation of the proceedings and also passing the order of assessment are in accordance with law.

4. Heard both sides.

5. Admittedly, the petitioner herein is not the assessee and on the other hand, one Sulochana was the assessee, who also was no more at the time of passing the impugned proceedings. It is stated by the petitioner that the said deceased assessee is the sister-in-law of the petitioner's mother-in-law. Section 2(41) of the Income Tax Act, 1961 defines the term relative as follows:

> “relative”, in relation to an individual, means the husband, wife, brother or sister or any lineal ascendant or descendant of that individual;

6. Certainly, the definition of the term relative, as defined under section 2(41), does not include the relationship between the petitioner and the deceased assessee. Therefore, I find that the order of assessment and the consequential demand issued on the petitioner by treating the petitioner as the relative of the deceased cannot be sustained in the eye of law. Merely because the petitioner is residing in the same property where the deceased assessee was living before her death, cannot be a reason to conclude as if the petitioner is also one of the legal heirs of the deceased. If such presumption is permitted, it would go against the definition of “relative” as defined under section 2(41). Therefore, I find that the impugned order

cannot be sustained, insofar as the petitioner is concerned. Accordingly, the Writ Petition is allowed and both the proceedings are quashed only insofar as the petitioner is concerned. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

vsi

To

The Income Tax Officer,
Non-Corporate Ward-12(4)
Room No.223, No.16,
BSNL Building,
Greams Road,
Chennai - 600 006.

+1cc to Mr.Rajkumar Jhabhak, Advocate SR.No.84123

+1cc to Mr.S.Raveekumar, Advocate SR.No.83281

W.P.No.23440 of 2018

SSV(CO)
GMY(28/12/2018)