IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.19746 of 2018
and W.M.P.Nos.23188 & 23189 of 2018

Orders reserved on 01.08.2018	Orders pronounced on 24.08.2018

Smt.Manjula Athur .. Petitioner

vs.

The Income Tax Officer,
Non Corporate Ward 13(5)
Annexe Building,
Aayakar Bhawan,
R.No.402, 4th Floor,
No.121, Nungambakkam High Road,
Chennai - 600 034. .. Respondent

Petition filed Under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records on the file of the respondent in its impugned proceedings made in Sl.No.PAN:AVPPM6061K/2017-18, dated 25.04.2018, quash the same as illegal and contrary to the scheme of the Act.

For Petitioner : Mr.S.Rajasekar
For Respondents: Mr.J.Narayanaswamy

O R D E R

The petitioner, an individual assessee under the provisions of the Income Tax Act, 1961, (Act), has filed this Writ Petition challenging the proceedings of the respondent, dated 25.04.2018, rejecting the objection raised by the petitioner for reopening the assessment under Section 147 of the Act for the assessment year 2013-14.

2. The petitioner filed return of income on 30.12.2014, declaring a total income of Rs.10,94,980/- and net agricultural income of Rs.1,60,00,000/-. The respondent issued notice dated 08.06.2016 under Section 148 of the Act, proposing to reopen the

assessment stating that there exists reasons to believe that income chargeable to tax for the year had escaped assessment. Another notice dated 07.06.2017, was issued to the petitioner to attend a personal hearing on 14.06.2017, in connection with the return of income submitted by the petitioner on 30.12.2014, for the assessment year 2013-14. By another notice, dated 07.06.2017, issued under Section 142(1) read with Section 129 of the Act, the respondent called for certain records relevant for the assessment year 2013-14. The petitioner would state that she along with her authorised representative had appeared before the respondent on 29.09.2017, and submitted certain details of land and requested further time to file the required documents as there was change of Auditor and non-availability of back papers connected with the return of income. This request was stated to be acknowledged by the respondent vide letter dated 25.10.2017. It is submitted that on 02.11.2017, the petitioner's authorised representative filed return of income, bank statements and copy of agricultural land documents before the respondent and the petitioner was directed to appear on 03.11.2017 with certain other documents. The petitioner did not appear and is stated to have sent a request for adjournment on the ground of illhealth, supported a medical certificate. On 20.11.2017, the respondent issued summons to the petitioner under Section 131/137 of the Act to appear on 23.11.2017, along with the required documents and also issued a show cause notice as to why penalty under Section 271(1)(b) of the Act, should not be levied for failure to appear before the respondent. Once again, request was made by the petitioner's representative vide letter dated 05.12.2017, to grant time for submission of documents till 11.12.2017. The respondent fixed the date for personal hearing as 08.12.2017. Thereafter, the petitioner on 12.12.2017, made a request for furnishing of reasons for reopening of the assessment, which was refused to be accepted and on the same date i.e., 12.12.2017, the respondent issued show cause notice calling upon the petitioner to show cause as to why the assessment should not be completed under Section 144 on or before 18.12.2017. At that stage, the petitioner filed Writ Petition in W.P.No.33318 of 2017. The respondent completed the assessment under Section 144 read with Section 147 of the Act by order dated 19.12.2017. Therefore, the petitioner amended the prayer in the Writ Petition. Ultimately, the Writ Petition was disposed of by final order dated 27.02.2018, setting aside the order of assessment, dated 19.12.2017 and directing the respondent to furnish reasons for reopening of the assessment within a period of 15 days, pursuant to which, the reason was communicated to the petitioner vide proceedings dated 15.03.2018. In response to the same, the petitioner submitted her objection dated 17.04.2018. This objection has been rejected by a speaking order dated 25.04.2018, which is impugned in this Writ Petition.

3. Mr.S.Rajasekar, learned counsel appearing for the petitioner after elaborately referring to the above factual position submitted that the notice issued under Section 143(2) of the Act on 07.06.2017, itself is barred by limitation. Further, it is submitted that the reopening is done based on the details furnished in the return of income and no new material or information was found to initiate reassessment proceedings, and as such on the basis of information gathered from the return, the only recourse available to the respondent is to assess the petitioner under Section 143(3) or Section 144. Further, it is submitted that when the petitioner filed return of income, showing agricultural income and the return having been accepted by the respondent, the Assessing Officer cannot invoke Section 147 of the Act and reopen the assessment, which is illegal, as it is a mere change of opinion and per se no tangible material is available for reopening the assessment.

4. Heard Mr.J.Narayanaswamy, learned Senior Standing counsel appearing for the respondent on the above submissions.

5. The earlier Writ Petition filed by the petitioner was challenging a show cause notice issued by the respondent calling upon the petitioner to show cause as to why the assessment should not be completed under Section 144 of the Act. During the pendency of the Writ Petition, the assessment was completed under Section 144 read with Section 147 of the Act vide order dated 19.12.2017. Consequently, the petitioner amended the prayer in the Writ Petition challenging the revised assessment. The Writ Petition was allowed with a direction to consider the request made by the petitioner for furnishing the reasons for reopening the assessment and on receipt of the reasons, the petitioner was directed to file objections and the respondent was directed to redo the assessment by following the mandate laid down in GKN Driveshafts India Ltd., vs. ITO, 203-259-ITR-19. In paragraph 7 of the order, dated 27.02.2018, the Court noted that admittedly no scrutiny assessment under Section 143 (3) was made and as per the annual information return received from the Bank and Sub-Registrars office, the petitioner had deposited cash of Rs.23.54 lakhs and purchased immovable properties for Rs.33 lakhs and the return of income filed by the assessee reflected receipt of agricultural income of Rs.1.6crores. Therefore, the Court noted that the respondent has initiated reassessment proceedings by issuing notice under Section 148 of the Act. The above factual findings recorded by the Court is not disputed by the petitioner. Thus, there was no scrutiny assessment done for the relevant assessment year and the assessment itself was under Section 143(2). The petitioner requested time to produce documents and for varied other reasons and the respondent came to a conclusion that adequate opportunity has been given and issued a notice under Section 144. At that juncture, the earlier Writ Petition was filed and

it appears that there was no interim order and by then, the assessment order was passed under Section 144 read with Section 147 of the Act. In such circumstances, the assessee cannot claim that reopening cannot be done, as there were no fresh tangible materials or reasons for reopening. If the original assessment was a scrutiny assessment under Section 143(3) of the Act, the Court might have examined as to whether there were fresh tangible material for reopening the assessment or it is a case of change of opinion. Since there was no scrutiny assessment, the question of change of opinion does not arise and therefore, the contention raised by the petitioner that the reopening of assessment is bad in law, cannot be countenanced.

6. To be noted that for the first time, the assessee has placed an explanation in respect of the information which was secured by the department, based on the annual information return received from the Bank and Sub-Registrar's office, which shown deposit of cash and purchase of immovable property. In addition there to, the return disclosed the receipt of agricultural income for which documents have been called for etc.

7. Thus, in my considered view the reopening of the assessment under Section 147 of the Act is perfectly legal and valid. The petitioner is directed to cooperate in the assessment proceedings.

For the above reasons, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

-s/d-
Deputy Registrar

True Copy

Sub-Assistant Registrar

pbn

To

The Income Tax Officer,
Non Corporate Ward 13(5)
No.121, Nungambakkam High Road,
Chennai - 600 034.

+1 CC to Mr.J. Narayanasamy, Advocate sr 58014.

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SP(05/09/2018)