IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 12.12.2018

CORAM
THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.33072 of 2018
and
WMP.No.38343 of 2018

Fairmacs Shipping and Transport Services Private Limited
Represented by its Director
Mr.Sunil Shete,
New No.31, B.A.Estates, Moore Street,
Parrys, Chennai-600 001. ..Petitioner

vs.

1.The Deputy Commissioner of Income Tax
Corporate Circle-2(1)
Room No.511, Wanaparthy Block
121, MG Road, Nungambakkam
Chennai-600 034.

2.The Assistant Commissioner of Income Tax
Corporate Circle-2(1)
Wanaparthy Block,
121, MG Road, Nungambakkam
Chennai-600 034. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the 2nd respondent and quash the impugned notice under Section 148 of the Act in PAN:AAACF0474A dated 17.01.2018 for the assessment year 2013-2014.

For Petitioner :Mr.R.V.Eswar, Senior Counsel
for Mr.R.Sandeep Bagmar

For Respondents :Mrs.Hema Muralikrishnan
standing counsel

O R D E R

Mrs.Hema Muralikrishnan, learned standing counsel takes notice for the respondents. By consent of the parties, the main writ petition itself is taken up for final disposal at the admission stage, since the issue involved in this case can be decided without filing a counter affidavit and hearing an elaborate arguments on either side for and against the reasons set out for re-opening the assessment.

2. Heard Mr.R.V.Eswar, learned Senior Counsel appearing for the petitioner and Mrs.Hema Muralikrishnan, learned standing counsel who takes notice for the respondent.

3. The petitioner is an Assessee. In respect of the assessment year 2013-2014, a scrutiny assessment order was passed on 27.03.2016 under Section 143(3) of the Income Tax Act, 1961. Thereafter, the Assessing Officer issued a notice dated 17.01.2018 under Section 148 of the IT Act, 1961, by stating that he has reasons to believe that the income of the Assessee chargeable to tax for the assessment year 2013-2014, has escaped assessment within the meaning of Section 147 of the IT Act, 1961. In response to the said notice, the petitioner through their communication dated 22.01.2018 informed the Assessing Officer that the return filed by them on 30.11.2013 may be treated as the return in response to the notice under Section 148 of the IT Act, 1961. However, for the purpose of compliance, they also filed a return of income dated 20.01.2018. In the very same communication, the petitioner sought for furnishing the reasons for re-opening the assessment. The Assessing Officer through a communication dated 20.04.2018 has furnished the reasons. It is stated therein that one of the Director of the petitioner-Company viz., Dattatray Ramkrushna Shete has sold a property for Rs.97,37,500/- on 23.07.2012; that the said transaction has been duly considered in the income of the petitioner-Company; however, the market value of the property was Rs.3,21,61,000/- and since the market value of the property was more than the amount for which the property was sold by the assessee, the provisions of Section 50C of the IT Act, 1961 is applicable. Thus, the Assessing Officer has stated that the difference between the market value and the sale consideration of the property sold has escaped the assessment and thus, it is to be brought to tax. The petitioner filed their objections by way of two communications dated 09.11.2018 and 18.11.2018. In both the communications, more specifically, in the communication dated 09.11.2018, apart from raising other objections, the Assessee informed the Assessing Officer that the provisions of Section 50C does not arise in this case, since the lands sold by the Assessee have been held as a business income and the gains on the sale has been shown under the head profits and gains from the business. Apart from raising such objections, the petitioner has also dealt with in detail as to why the re-opening is not justifiable. The Assessing Officer, thereafter, passed the order dated 22.11.2018, rejecting the objections raised by the petitioner. Hence, the present writ petition is filed before this Court.

4. The learned Senior Counsel for the petitioner after inviting this Court's attention to the original return filed and the assessment order passed under Section 143(3) of the IT Act, 1961, dated 27.03.2016, submitted that treating the income

derived out of selling the lands, by the assessee, as business income, has been considered and dealt with by the Assessing Officer in detail in the order of assessment at Paragraph Nos.8.1 & 8.2. Therefore, he submitted that the Assessing Officer is not entitled to now re-open the assessment by changing his view on the same issue. Apart from raising the above said contention, the learned Senior Counsel further contended that the reliance placed on by the Assessing Officer to Section 50C of the IT Act, 1961, to re-open, is totally erroneous, as the said provision is applicable only in respect of capital gain and not in respect of business income, as has been accepted by the Assessing Officer in the order of assessment.

5. The learned standing counsel for the respondents submitted that the Assessing Officer, while passing the order dated 22.11.2018 has only referred to the objection raised by the petitioner on 18.11.2018 and not referred to another objection dated 09.11.2018, wherein, the petitioner has specifically raised the issue with regard to the applicability of Section 50C of the IT Act, 1961. Therefore, she fairly submitted that the matter may be remitted back to the Assessing Officer to pass fresh orders after considering both the objections viz., objections dated 09.11.2018 & 18.11.2018.

6. As rightly pointed out by the learned standing counsel for the respondents, the Assessing Officer while rejecting the objections raised against the re-opening, has only referred to the objection dated 18.11.2018 and not the objection dated 19.11.2018, wherein, the Assessee has specifically raised the question with regard to the applicability of Section 50C of the IT Act, 1961. Perusal of the impugned order further indicates that the Assessing Officer except extracting some case laws and making his general observation on the power under Section 147, has not adverted to any of the contentions raised by the petitioner in their objection against the reasons for re-opening, more particularly, with regard to the applicability of Section 50C of the IT Act, 1961 to the facts and circumstances of the present case. Needless to state that the Assessing Officer while considering the objections raised against re-opening has to necessarily deal with each of the objections raised and express his decision on those objections. A mere statement of power vested on the authority under Section 147 is not enough to presume that he has applied his mind to the objections. At the same time, this Court makes it very clear that it is not expressing any view on the merits of the above contentions raised by the learned Senior Counsel for the petitioner, as this Court is inclined to set aside the order dated 22.11.2018 and remit the matter back to the Assessing Officer to pass fresh orders, by considering all the objections raised by the petitioner, through their communications dated

09.11.2018 and 18.11.2018.

7. Accordingly, this writ petition is allowed and the impugned order is set aside. Consequently, the matter is remitted back to the first respondent/Assessing Officer to pass fresh orders after considering the objections raised by the petitioner against the re-opening of the assessment on merits and in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

mk

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+1cc to Mr.Hema Muralikrishnan, Advocate, S.R.No.86021
+1cc to Mr.Sandeep Bagmar, Advocate, S.R.No.86054

W.P.No.33072 of 2018

KAN(CO)

rrs 13/12/2018