

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	17.10.2019
Pronounced On	01.11.2019

CORAM

THE HON'BLE DR.VINEET KOTHARI, ACTING CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE C.SARAVANAN

W.A.Nos.3321 to 3324, 3327 & 3328 of 2019
and
C.M.P.Nos.21333, 21334, 21336 to 21339, 21342,
21344, 21346, 21356 & 21358 of 2019

Mohan Ravi.

.. Appellant in
all W.As.

Vs

The Income Tax Officer,
Non-Corporate Ward 20(5) CHE,
121, Nungambakkam High Road,
Chennai - 600 034.

... Respondent in
all W.As.

COMMON PRAYER: Writ Appeals filed under Clause 15 of Letter Patent, to set aside the common order dated 26.08.2019 passed by the Learned Single Judge in W.P.Nos.25239, 25242, 25241, 25244, 25245 & 25248 of 2019.

WP No.25239 of 2019
calling for the records on the file of the Respondent in PAN .
ADLPR6964Q and quash the impugned notice in No.ITBA/ AST/ S /
148/ 2018-19 / 1015529572(1) dated 29.03.2019 issued u/s 148 of
the Act for the AY 2012-13 along with consequential proceedings
in C.No.ADLPR6964Q/ 2019-20/ 11 dated 31.07.2019 as illegal and
without jurisdiction

WP No.25242 of 2019
calling for the records on the file of the Respondent in PAN .
ADLPR6964Q and quash the impugned notice in No.ITBA/ AST/ S /
148/ 2018-19 / 1015529573(1)) dated 29.03.2019 issued u/s 148 of
the Act for the AY 2013-14 along with consequential proceedings
in C.No.ADLPR6964Q/ 2019-20/7 dated 31.07.2019 as illegal and
without jurisdiction

WP No.25241 of 2019
calling for the records on the file of the Respondent in PAN .
ADLPR6964Q and quash the impugned notice in No.ITBA/ AST/ S /
148/ 2018-19 / 1015529571(1) dated 29.03.2019 issued u/s 148 of
the Act for the AY 2013-14 along with consequential proceedings
in C.No.ADLPR6964Q/ 2019-20/9 dated 31.07.2019 as illegal and
without jurisdiction

WP No.25244 of 2019
calling for the records on the file of the Respondent in PAN.
ADLPR6964Q and quash the impugned notice in No.ITBA/ AST/ S /
148/ 2018-19 / 1015522677(1) dated 29.03.2019 issued u/s 148 of
the Act for the AY 2015-16 along with consequential proceedings
in C.No.ADLPR6964Q/ 2019-20/6 dated 31.07.2019 as illegal and
without jurisdiction

WP No.25245 of 2019
calling for the records on the file of the Respondent in PAN .
ADLPR6964Q and quash the impugned notice in No.ITBA/ AST/ S /
148/ 2018-19 / 105522683(1) dated 29.03.2019 issued u/s 148 of
the Act for the AY 2016-17 along with consequential proceedings
in C.No.ADLPR6964Q/ 2019-20/3 dated 31.07.2019 as illegal and
without jurisdiction

WP No.25248 of 2019
calling for the records on the file of the Respondent in PAN .
ADLPR6964Q and quash the impugned notice in No.ITBA/ AST/ S /
148/ 2018-19 / 1015522669(1) dated 29.03.2019 issued u/s 148 of
the Act for the AY 2017-18 along with consequential proceedings
in C.No.ADLPR6964Q/ 2019-20/1 dated 31.07.2019 as illegal and
without jurisdiction.

For Appellant : Mr.R.Sivaraman
in all W.As.

For Respondent : Mr.J.Narayanasamy
Senior Standing Counsel
in all W.As.

C O M M O N J U D G M E N T
C.SARAVANAN, J.

By this common Judgment, we are disposing all the six Writ Appeals. These Writ appeals are directed against the common order dated 26.08.2019 passed by the Learned Single Judge of this Court in W.P.Nos.25239, 25241, 25242, 25244, 25245 & 25248 of 2019.

2.By the impugned common order, the Learned Single Judge has dismissed the above Writ Petitions which were directed against six Notices all dated 29.03.2019 issued under Section 148 of the Income Tax Act, 1961 for the Assessment Years of 2012-13 to 2017-2018 to the appellant.

3.By the impugned common order, the learned single judge has dismissed the six writ petitions with the following observations:-

23. This Court is of the considered view that such 11th hour petitions will derail assessments process under fiscal law statutes. It is made clear that this view is taken in the peculiar trajectory of this case, as the writ petitioner has approached this Court at the 11th hour particularly when the writ petitioner had all the time in the world to approach this Court earlier. As alluded to supra, these writ petitions have been filed at the 11th hour, pursuant to impugned notices II, on realizing that the personal hearing is fixed on 26.08.2019. If writ petitioner had sought an adjournment in the forenoon today and if the hearing is rescheduled, the respondent shall consider all documents that are furnished by writ petitioner /assessee interalia in support of deductions claimed before completing the assessment. If such a scenario unfurls, the same shall be done uninfluenced and untrammelled by anything that is se tou in the instant order. This answers point (c) raised by writ petitioner.

4.Assailing the same, the present Writ Appeals have been filed.

5.Heard Mr.R.Sivaraman learned counsel for the appellant and Mr.J.Narayanasamy, Senior Standing Counsel for the respondent Income Tax Officer.

6.It is the contention of the learned counsel for the appellant that the appellant is a film actor who had filed periodical Returns under Section 139 of the Income Tax Act, 1961.

7.Thereafter, six Notices dated 29.03.2019 for the above mentioned Assessment Years were issued to the appellant contrary to be settled principle of law. It is stated that the impugned notices did not contain any reasons for invoking the powers under Section 148 of the Income Tax Act,1961.

8.It is further contended that the appellant also called upon the respondent Income Tax Officer to furnish the reasons for reopening of the assessment, to enable the appellant to file their objections his objection.

9.By six separate intimations dated 26.04.2019, the respondent Income Tax Officer informed to the appellant the reasons for reopening the Assessment Years wherein it was stated that on perusal of Return of Income Tax filed by the appellant for the above Assessment Years during survey under Section 133 A of the Income Tax, 1961, it was noticed that the appellant had claimed expenses equivalent to 59.23%, 51.10%, 38.79%, 26.71%, 28.88% & 35.24% in the respective Assessment Years in question.

10.It was stated that on 18.03.2018, the appellant was called upon to furnish bills and invoices for all the expenses claimed, discrepancies with income, loan agreement copies etc. However, the appellant had failed to furnish the details despite time granted till 25.03.2019.

11.The Impugned Notices issued under Section 148 of the Income Tax Act, 1961 were assailed by placing reliance on the decision of the Hon'ble Supreme Court in CIT vs Kelvinator of India, 320 ITR 561 wherein it was held that there must be an existence of a tangible material to reopen an assessment, to draw a conclusion that the income escaped assessment to invoke the provisions of Section 147 of the Act.

12.It was submitted that mere suspicion or surmise was not sufficient to invoke the powers vested under Section 148 of the Act. It was further stated that the notice issued also does not anywhere state income has escaped.

13.Apart from the above, the learned counsel for the appellant also relied upon the following decisions:-

- i. Khubchandani Health Parks (P.) Ltd., vs ITO, (2016) 68 taxmann.com 91 (Bombay).
- ii. PCIT vs Tupperware India (P.) Ltd., (2016) 65 taxmann.com 17 (Delhi).
- iii. CIT vs Orient Craft Ltd., (2013) 29 taxmann.com 392 (Delhi).
- iv. Grindwell Norton Ltd., vs Jagdish Prasad Jangid, Assistant Commissioner of Income Tax & Ors, (2004) 267 ITR 673 (Bom).

14.The learned counsel for the appellant further submitted that there are no tangible materials that are available for invoking jurisdiction under Section 147/148 of the Income Tax Act, 1961. It is submitted that non furnishing of information

will not ipso facto not amount to escapement of Income Tax. It is further submitted that the Authorities concerned could have made assessments under Section 143 (3) of the Act after due scrutiny.

15. Per contra the learned counsel for the revenue Mr. Narayanaswamy submits that the reassessment proceedings are well reasoned and require no interference and therefore prays for dismissal of all the six Writ Appeals.

16. We have considered the records. All the six notices issued under Section 148 of the income Tax Act, 1961 read identically with mutatis mutandis's changes in the date and the assessment years. The notice for the Assessment Year 2012 -13 reads as under:-

Notice Under Section 148 Of Tax Income Tax Act,
1961

Sir/Madam/M/s,

Whereas I have reasons to believe that your income chargeable to Tax for the Assessment Year 2012-13 has escaped Assessment within the meaning of section 147 of the Income Tax Act, 1961.

I, therefore, propose to assess/re-assess the income/loss for the said Assessment Year and I hereby require you to deliver to me within 30 days from the service of this notice, a return in the prescribed form for the said Assessment Year.

This notice is being issued after obtaining the necessary satisfaction of the PCIT/CIT 10 C

17. The assessee was separately communicated the reason for reopening vide letter dated 26.04.2019.

18. The assessee's objections thereto filed on 11.05.2019 were also rejected by the Assessing Authority vide letter dated 31.07.2019.

19. Under Section 148, if the assessing officer has reasons to believe that income has escaped assessment he can issue a notice for passing order under Section 147 of the Income Tax Act, 1961. The sufficiency of those reasons cannot be gone into by this Court. If relevant germane reasons exist and have been communicated to the assessee that is enough for reassessment proceedings to hold the field. In this case, during scrutiny the

appellant was further asked to furnish the details of the invoices for the expenses incurred vide letters dated 31.07.2019. However, the appellant failed to furnish the same.

20. Therefore, it would be improper to hold that the respondent Income Tax Officer had erred in invoking the reassessment jurisdiction vested with him under Section 147/148 of the Act, in the facts and circumstances case. Only when there are no grounds at all for invoking the reassessment jurisdiction under Section 148 of the Act, the notices can be challenged. Further, the appellant has himself replied and participated in the impugned proceedings. The reasons were also communicated to the appellant to which the appellant has also replied. Therefore, it is not open for the appellant to question the same to scuttle the proceedings initiated under the Act. Therefore, we find no reasons to interfere with the order of the learned Single Judge while dismissing the above Writ Appeals.

21. Accordingly, all the Writ Appeals are dismissed. No cost. Consequently, connected all Miscellaneous Petitions are closed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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To

The Income Tax Officer,
Non-Corporate Ward 20(5) CHE, 121,
Nungambakkam High Road, Chennai - 600 034.

+6 CCS to Mr.R.Sivaraman, Advocate sr 91574

+1 CC to Mr.J.Narayanasamy, Advocate sr 90661.

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VSNII (CO)

SP(11/12/2019)