IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2020

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.NOS.4788 & 4789 OF 2012
AND
M.P.NOS.1, 1 OF 2012

P. Kamalanathan (Died)
2. K.R.Pradheep ... Petitioners in W.P.No.4788 of 2012

(P2 Substituted as LR of Deceased petitioner P.Kamalanathan as per order of this court dated 19.07.2019 in WMP.No.20629 of 2019)

M.Geetha ... Petitioner in W.P.No.4789 of 2012

Vs

Assistant Commissioner of Income-tax,
Business Range VI,
121, Uthamar Gandhi Salai,
Chennai - 600 034. ... Respondent in both W.Ps

Prayer in W.P.No.4788 of 2012:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records in PAN : AAEPK9874A dated 13.02.2012 on the file of the Respondent relating to the Assessment Year 2006-2007 and quash the same.

Prayer in W.P.No.4789 of 2012:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records in PAN : AADPG9533D dated 13.02.2012 on the file of the Respondent relating to the Assessment Year 2006-2007 and quash the same.

For Petitioners (in both W.Ps)	:	M/s.N.Muthukumar
For Respondent (in both W.Ps)	:	Mr.Prabu Mukunth Arunkumar Junior Standing Counsel for Ms.Hema Murali Krishna Standing Counsel

COMMON ORDER

By this common order both the writ petitions are being disposed.

2. In these writ petitions, the respective petitioners have challenged the impugned communication dated 13.02.2012 overruling the objections of the petitioners dated 10.02.2012 in response to reasons communicated vide communication dated 4.10.2011 for reopening of the assessment under Section 148 of the Income Tax Act, 1961 vide two notices dated 06.09.2011.

3. The petitioners were co-owners of the property which according to them was a house property on a land measuring an extent of 31,037 Sq.ft., at Jawaharlal Nehru Road, Vadapalani, Chennai 600 026. It is the case of the petitioners that they were receiving rental income on the house property and had declared the same while filing returns in their returns for the Assessment Years 2004-05 and 2005-06.

4. The petitioners along with other co-owners sold the same vide sale deed dated 09.12.2005. However, in the recital of the sale deed, there is only a transfer of the land and not the house property.

5. It is the case of the petitioners that they had filed returns for the Assessment Year 2006-07 and the returns were assessed under Section 143(3) of the Income Tax Act, 1961 and deduction claimed under Section 54 was allowed by the respondent.

6. The petitioners have also invested the amounts under the capital gains account of the Indian Bank, T.Nagar on 31.05.2006/NABARD. It is submitted that there are no materials available on record to show that the petitioners had failed to disclose truly and fully all material that were required for the purpose of assessment and therefore reopening of the assessment was without jurisdiction.

7. It is therefore stated that the impugned communication dated 13.02.2012 overruling the objection of the petitioner was liable to be quashed.

8. On the other hand, it is the case of the respondent that the petitioners have failed to disclose truly and fully all material facts in as much as they have only sold a land and not a house property and had therefore wrongly claimed deduction under Section 54 of the Income Tax Act, 1961.

9. I have considered the submissions of the learned counsel for the petitioners and the respondent.

10. In the returns filed for the Assessment Years 2004-05 and 2005-06, the petitioners have merely shown having received a share from the rent from the property which was sold later on 09.12.2005. However, the Annexure 1 to statement of total income for the year ended 31.03.2004 and 31.03.2005 do not clearly spell out that the rental income from the aforesaid property is from renting of the land or from renting of the house. Therefore, it appears that the respondents were justified in reopening the assessment as prima facie there was no true and full disclosure as was required of the petitioners for the purpose of assessment.

11. The fact that the petitioners have also shown only sale of land in their sale deed dated 09.12.2005 indicates that respondent was justified in reopening the assessment.

12. Therefore, even though the objections of the respective petitioners have been overruled by the respondent vide the impugned communications dated 13.02.2012, I am of the view that the respective petitioners should participate in the proceedings under Section 147 of the Income Tax Act, 1961 by filing all evidences that are available with them to substantiate that the property in question was a house property and therefore the petitioners were justified in claiming the benefit of Section 54 of the Income Tax Act, 1961.

13. In case there has been true and full disclosure of all materials that were necessary for the purpose of assessment under Section 139 of the Income Tax Act, 1961, the respondent would be obliged to drop the proceeding in terms of proviso to Section 147 of the said Act.

14. The respective petitioners may file their objections within a period of thirty days from the date of receipt of a copy of this order. Since the dispute pertains to Assessment Year 2006-07, the respondent is requested to pass appropriate orders within a period of three months from the date of receipt

of a copy of this order. Needless to state, the respective petitioners shall be heard before passing final orders.

15. Accordingly, the writ petitions stand disposed with the above observations. No cost. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

arb/jen

To

Assistant Commissioner of Income-tax,
Business Range VI,
121, Uthamar Gandhi Salai,
Chennai - 600 034.

+1cc to Ms.Hema Murali Krishna, Advocate, S.R.No.13356
+1cc to M/s.N.Muthukumar, Advocate, S.R.No.13919

W.P.Nos.4788 & 4789 of 2012
and M.P.Nos.1, 1 of 2012

SV(CO)
CS/22/05/2020