IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2020
CORAM
THE HONOURABLE MR.JUSTICE C.SARAVANAN
W.P.No.3978 of 2017
and
W.M.P.Nos.4063 to 4065 of 2017
and W.M.P.No.31996 of 2015

Mrs.Hemalatha Ramaiah ... Petitioner

vs

Assistant Commissioner of Income Tax,
Non Corporate Circle 3,
Income Tax Department,
Room No.623-A, VI Floor,
New Block, Aayakar Bhawan,
No.121, M.G.Road, Nugambakkam,
Chennai - 600 034. ... Respondent

Prayer:- Writ Petition filed under Article 226 of Constitution of India, to issue Writ of Certiorarified, calling for the records of the respondent pertaining to the Section 148 notice dated 31.03.2016 issued to the petitioner having PAN No.AABPR1629K for the assessment year 2009-10 along with records of all consequential proceedings including the reassessment order dated 29.12.2016 passed under Section 143(3) r/w 147 of the IT Act, 1961, the demand notice dated 29.12.2016 issued under Section 156 of the Income Tax Act, 1961 and the penalty proceedings dated 29.12.2016 initiated under Section 271(1)(c) of the Income Tax Act, 1961 for the assessment year 2009-10 and quash the same as without jurisdiction.

For Petitioner : Mrs.Nalini Chidambaram,
Senior Counsel for M/s.C.Uma.

For Respondent : Mrs.Hema Muralikrishnan
Senior Standing Counsel.

ORDER

The petitioner has challenged the impugned order dated 29.12.2016 passed by the respondent under Section 143 (3) r/w. Section 147 of the Income Tax Act, 1961. The impugned order was passed pursuant to the notice issued to the petitioner on 31.03.2016, being the last date on which the re-assessment could be made under the proviso to Section 147 of the Income Tax Act, 1961.

2.The petitioner had entered into agreement dated 01.04.2006 with Trent Ltd and its affiliates for sale of her shares in Landmark Ltd. In the agreement the non-compete clause reads as under:-

> 10.Non-competition restrictions:
> 10.1.4: Save for those business which is carried on by the Shareholder as at the date of this agreement, at any time hereafter and until the expiration of one year from the date it ceases to be beneficially interested in any Shares, either alone or jointly with any other person through or as manager, adviser, agent, consultant, employee or agent for or shareholder in any person, firm or company directly or indirectly carry on or be engaged or concerned or interested in the provision of retailing of books, magazines, stationary items.

3.The petitioner sold 1/25th share in Landmark and its Associates Companies to Trent Ltd and affiliates for Rs.5,76,00,000 in the Assessment year 2006-07 (30.08.2015 & 10.03.2006). On 30.04.2008, the petitioner entered into an another agreement with Trent Ltd and its affiliates for sale of 21% stake in the Land Mark Group Companies. The said agreement contained non-compete clause which reads as under:-

> "10.(c). At any time hereafter and upto 30th April, 2009 shall not start her own retail store dealing in books, music, magazines and stationary items."

4.The petitioner thus sold 849900 equity shares, 525000 warrants and 25350 cumulative preference shares for an aggregate consideration of Rs.39,25,34,400/- to Trent Ltd. and its associates on 30.04.2008. Meanwhile, the assessment was completed under Section 143(3) of the Income Tax Act, 1961 accepting the profit on sale of shares as Capital Gains.

5.Later, the petitioner sold 2,00,000 shares in Landmark Limited to Trent for total consideration of Rs.10,50,00,000/-. In the return filed by the petitioner for the assessment year 2008-09, the consideration amount received from the sale above 2,00,000 shares was treated as Capital Gains by the petitioner. The return filed by the petitioner was also accepted under Section 143(1) of the Income Tax Act, 1961 vide assessment order dated 02.11.2009.

6.On 30.11.2009, the petitioner filed return, wherein the petitioner admitted a total income at Rs.40,70,64,770/- including Long Term Capital Gains (LTCG) on sale of shares in Landmark group companies at Rs, 37,91,81,581/-.

7.Notice was issued under Section 142(1) of Income tax Act, 1961 for Assessment Year 2009-10. Pursuant to the same, the petitioner had replied on 11.08.2011. Notice under Section 142 (1) of the Income Tax Act, 1961 was issued by the respondent on 25.10.2011 asking the petitioner to produce documents among others, share holders agreement on 01.04.2006 with Landmark Limited, details of calculation of capital gains, return of income copies for Assessment Years 2007-08 and 2008-09 along with the computation statements. Thereafter, the petitioner has produced the same on 09.11.2011.

8.On 21.12.2011, the regular assessment under Section 143(3) of the Income Tax Act, 1961 for the assessment year 2009-10 was completed after scrutiny accepting the income returned vide order dated 21.12.2011 raising a demand of Rs.3,020. Complete details including copy of agreement for sale of shares dated 30.04.2008 were submitted by the petitioner in the course of assessment proceedings. A petition under Section 154 was filed seeking credit for TDS Rs.2,132/- which was omitted to be given and which resulted in the above demand.

9.The respondent issued notice under Section 156 of Income Tax Act on 21.12.2011 specifying a sum of Rs.3020/- as payable for the assessment year 2009-10. A petition was filed under Section 154 of the Income Tax Act, 1961 for rectification of mistake on 29.12.2011 before the respondent stating that TDS on interest receipts amounting to Rs.2,132 has not been allowed.

10.The Assessing Officer wrote a letter to the petitioner on 05.02.2014 and asked for clarification on the sale of shares. In the letter, the respondent has stated as under:-

"Since the shares were alloted on non competitor restriction, the gain on sale of the same requires to be reconsidered as business income u/s 28(va). Hence the long term capital gains of Rs.37,91,81,581/- requires to be taxed as business profit of the assessee. In this connection you are required to submit a clarification for the same."

11.Pursuant to the above letter, the Charted Accountant of the petitioner appeared and has explained the transaction of sale of shares stating that the consideration received for the transfer of shares was not remotely connected to any business activity or coming under ambit of Section 28(va) of the Income Tax Act, 1961. The respondent had become functus officio after the assessment order was passed for the assessment year 2009-10 under Section 143(3) of the Income Tax Act, 1961 and had no power to seek any clarification vide letter dated 05.02.2016 from the petitioner.

12.The petitioner offered her explanation and assumed that the respondent was satisfied with the explanation.

13.It was the contention of the respondent that the amount received by the petitioner from sale of share ought to be treated as "business profit" under Section 28 (va) of the Income Tax Act, 1961 and they cannot be treated as "Long Term Capital Gains (LTCG)" of the petitioner. The respondent took the view based on a decision of this Court which is explained in the said letter. The relevant portion of the letter dated 05.02.2014 asking for the clarification from the petitioner reads as under:-

> It is seen from the records that you have filed ROI on 30.11.2009 admitting a taxable income of Rs.40,70,64,770/- and the assessment was completed u/s.143(3) on 21.12.2011 and the income was assessed at Rs.40,70,64,770/-
>
> The non-complete convenant on its own cannot amount to a transfer of any right. A mere detrainment from carrying on an activity would be taxed under Section 28(va). In this case the assessee had entered into an agreement with a company which had purchased a certain plot on which the assessee was carrying on fish farming. By the agreement the assessee had agreed to stop fish farming in the said ponds, for which he had

received a certain sum from the said company. The High Court was of the view that the assessee had received the said sum from the said company. The High Court was of the view that the assessee had received the said sum for not carrying on any activity in relation to fish farming same being taxable under Section 28 (vz) (a) Assessee contended that the said sum be taxed under Section 45 as capital gains. To this the High Court held that for the application of section 45 there should be a transfer of capital asset which was absent in the case.

On scrutiny of records, it was observed that the assessee offered income from capital gain as follows:-

Long term capital gain : Rs.37,91,86,581

Short term capital gain : Rs.43,71,148

As per the shareholders agreement of Trent Ltd. A company and others with the assessee who were the partners of M/s.Landmark a firm in which the Trent Ltd held 78% and the assessee held 21% of share in the firm was converted into a limited company ins pursuant to the provision of sec.565-578 of the Companies Act and in consideration of the same for which the assessee entered into non-competition restrictions (vide Sl.No.10 of the share holder agreement), the consideration was paid as share warrant and shares redeemable at pre-fixed minimum rate. Since the shares were allotted on non-competitor restriction, the gain on sale of the same requires to be considered business income u/s.28 (va).

Hence the long Term Capital Gain of Rs.37,91,81,581/- requires to be taxed as business profit of the assessee.

In this connection you are required to submit a clarification for the same. Your reply should reach this office on or before 06.03.2014.

14.After lapse of two years thereafter, on 31.03.2016, the above notice was issued under Section 148 of the Income Tax Act, 1961. The notice merely stated that the officer concerned has reason to believe that the income declared by petitioner chargeable to tax for the assessment year 2009-10 has escaped assessment within the meaning of Section 147 of the Income Tax Act, 1961 and thereafter proposed to assess/re-assess the income for the said assessment period and called upon the petitioner to deliver a return in the prescribed form for the said assessment year. It states that the notice was issued after obtaining necessary to the satisfaction of the Pr. Commissioner of Income – 5, the Central Board of Direct Taxes.

15.The learned senior counsel for the petitioner would submit that to invoke the jurisdiction under Section 148 r/w Section 147 of the Income Tax Act, 1961, the respondent was duty to bound, to come a conclusion that they had reasons to believe that there was failure on the part of the assessee to make a return under Section 139 or in response to a notice issued under Section 142(1) or Section 148 or to disclose fully and truly all material facts necessary for assessment.

16.It is submitted that the issue as to whether the income was to be treated as "Long Term Capital Gain (LTCG)" or "business profit" in the hands of the petitioner cannot be reopened by invoking the Section 148 of the Income Tax Act, 1961 beyond the period of four years under proviso of Section 147 of Income Tax Act, 1961. It is submitted that the notice ought to have been issued within 4 years from the date of relevant date under Section 147 of the Income Tax Act, 1961. In this connection, the learned senior counsel for the petitioner, it strongly relied on the following decisions:-

i. Calcutta Discount Company Vs. Income-Tax Officer, Companies, AIR 1961 SC 372.
ii. Jeans Knit (P.) Ltd. Vs. Deputy Commissioner of Income-tax, Bangalore, (2017) 77 taxmann.com 176 (SC).
iii. Martech Peripherals (P.) Ltd. Vs. Deputy Commissioner of Income-tax, Company Circle IV (1), Chennai, (2017) 81 taxmann.com 73 (Madras).
iv. Fenner (India) Ltd. Vs. Deputy Commissioner of Income Tax, 2000 241 ITR 672 Mad.

17.The learned Senior Counsel for the petitioner also placed reliance on the following decisions:-

i. Commissioner of Income Tax, Delhi Vs. M/s.Kelvinator of India Ltd., (2010) 2 SCC 723.
ii. ITO vs Tech Span India Pvt. Ltd., (Supreme Court), dated 24.04.2018.
iii. Mobis India Ltd. Vs. DY CIT Madras High Court, (2018) 90 Taxmann.com 386 (Madras).
iv. Madras Suspensions Ltd. Vs. Deputy Commissioner of Income Tax, (2017) 88 Taxmann.com 256 (Madras).

18.Defending the impugned order, the learned Senior Standing Counsel for the respondent Income Tax Department submits that the petitioner having rightly opted to file an appeal before the Appellate Commissioner, cannot file Writ Petition to quash the impugned order.

19.In this connection, the learned senior Standing Counsel relies on the decision of the Hon'ble Supreme Court in Kisan Agro Mart (P.) Ltd. Vs. Income Tax officer, (2019) 109 taxmann.com 496 (SC), wherein the Hon'ble Supreme Court directed the Appellant therein to approach the concerned Appellate Commissioner as the Appellant had already availed remedy of appeal by filing a substantive appeal before the Commissioner Appeals challenging the Assessment Order.

20.The learned Senior Standing Counsel for the respondent Income Tax Department referred to the decision of the Hon'ble Supreme Court of India in S.Narayanappa Vs. Commissioner of Income-tax, (1967) 63 ITR 219 (SC), wherein the Hon'ble Supreme Court of India had earlier held that there was no necessity under any of the provision of Act or any Section laying down as a condition for the initiation of the proceedings that the reasons which induced the Commissioner to accord sanction to proceed under Section 34 must also be communicated to the assessee.

21.The learned Senior Standing Counsel for the respondent submits that it is only after the decision of the Hon'ble Supreme Court in G.K.N.Driveshafts (India) Ltd. Vs. Income Tax Officer and Others, (2003) 1 SCC 72, a procedure was devised for giving reasons to invoke the Section 148 r/w proviso to Section 147 of the Income Tax Act, 1961. It is submitted that the appellant did not ask for reasons for invoking Section 148 though four years had lapsed from the end of the financial years.

22.Heard the learned Senior Counsel for the petitioner and the learned Senior Standing Counsel for the respondent.

23.The notice under Section 148 of the Income Tax Act, 1961 was issued on 31.03.2016, which gives no reasons. It however records that it was issued after obtaining necessary satisfaction of the Pr. Commissioner of Income Tax-5, the Central Board of Direct Taxes (probably means necessary permission). The reasons were not communicated to the petitioner as the petitioner also did not ask for such reasons.

24.The learned Senior Standing counsel Income Tax Department for the respondent was therefore asked to furnish the reasons for invoking the jurisdiction under Section 148 r/w proviso to Section 147 of the Income Tax Act, 1961 as prima facie it appeared the impugned order dated 29.12.2016 was passed holding that the petitioner was liable to pay tax on amounts received by her as income from business and not from Long Term Capital Gains (LTCG) as was claimed by the petitioner.

25.The learned Senior Standing Counsel for the respondent furnished the reasons, which read as under:-

> The order u/s.143(3) was passed on 21.12.2011 accepting the income returned by the assessee of Rs.40,70,64,770/- As per the memo of computation of total income, the income offered to tax includes salary of Rs.2,32,10,958/- income from house property of Rs.3,94,164/- LTCG of Rs.37,91,81,581/- STCG of Rs.43,71,148/- and income from other sources of RS.1,06,916/-. The assessee was also in receipt of divided income of Rs.2,95,41,951/- and the same was claimed as exempt u/s.10 (34). On examination of Annexure 2 to the memo of computation of total income which provides the particulars of computation of STCG, it is seen that on a total redemption of mutual funds worth Rs.48,44,15,981/-= the assessee has derived a STCG of Rs.43,71,148/-. As per the statement of income accounts held by the assessee at HSBC and CITI Bank, the total redemption value of mutual funds credited into these accounts for a sum of Rs.79,59,41,282/-. The assessee has not offered any LTCG exempt U/s.10(38), in the memo of computation of total income. Under the circumstances, due to mismatch of turnover, it is clear that the taxable income in the form of STCG on the

differential value of redemption of Rs.31,12,25,363/- has escaped assessment within the meaning of S.147. Further, it is also seen that in computing the eligible quantum U/s.10 (34) the provisions of S.94(7) and 94 (8) have not been enforced STCL in respect of Mirea Asset (Rs.7,14,922/-) Reliance medium Term Fund (Rs.30,808/-). Franklin Templeton Short Term Income (Rs.47,111/-) and Sundaram BNPP interest Fund (Rs.12,014) summing up to Rs.8,04,855/- therefore it cannot be allowed. For the reasons discussed above, I have clear reasons to believe that the income of the assessee has escaped assessment within the meaning of S.147 and I solicit the approval of the CIT for issue of notice U/s.148.

S/-(I.P.ROOPA)
Assistant Commissioner of Income Tax
Non-Corporate Circle 3, Chennai.

Date: 29/03/2016

12. Whether the Joint Commissioner is satisfied with the reasons recorded by the ACIT that it is a fit case for issue of Notice U/s.148	-	Yes I am satisfied Recommended.

Sd/-(K.N.DHANDAPANI)
Assistant Commissioner of Income Tax
Non-Corporate Circle -3, Chennai.

Date:

13.Whether the Commi--ssioner is satisfied with the reasons recorded by the ACIT that it is a fit case for issue of Notice U/s.148 Act.	-	Yes I am satisfied that it is fit for re-opening U/s.147 of the IT Act

Sd./-(ANIL KUMAR), 30.03.16
Pr. Commissioner of Income Tax - 5,
Chennai – 600 034.

26.The above reasons given for invoking Section 148 read with proviso to Section 147 of the Income Tax Act, 1961 has been given a go by in the Assessment Order dated 29.12.2016 by the respondent. Instead, the reasons given in the impugned order dated 29.12.2016 read as under:-

6. Business Income

As on 1.4.2007, the assessee held 21% share in Landmark & Associated Companies. M/s Landmark was converted into Landmark Ltd. and in lieu of her holdings in the above firm/companies, the assessee was alloted the following:

10,50,000 equity shares in Landmark Ltd. @ Rs.10 each	= Rs.1,05,00,000/-
25,350 Convertible Preference shares @ Rs.100 each	= Rs. 25,35,000/-
5,25,000 Share warrant @ Rs.10 each	= Rs. 52,50,000/-
	Rs.1,82,85,000/-

During the year, the assessee sold the following shares and warrants in Landmark Limited to Trent Ltd:

5,25,000 share warrants @ Rs.278 per Warrant	= Rs.14,59,50,000/-
25,350 preference shares @ Rs.38 per preference share	= Rs. 93,63,300/-
8,49,900 equity shares @ Rs.289 per equity share	= Rs.24,56,21,100/-
	Rs.39,25,34,400/-

On this, after claiming cost of acquisition as well as expenses in relation to transfer, the assessee arrived at a Long term Capital Gains of Rs.37,91,81,581/-. However in the shareholders agreement between Trent Ltd and the assessee, certain Non-Competition restrictions have put on the assessee. Point No.10.1.2 states that the assessee will not disclose any information regarding the company, its business, accounts or clients to others. The next point states that she will not directly or indirectly try to entice away the clients, suppliers or employees of the company. Point No.10.1.4, which is crucial to the non-complete aspect states that the assessee shall not,

"Save for those business which is carried on by the shareholder as at the date of this agreement, at any time hereafter and until the expiration of one year from the date it ceases to be beneficially interested in any shares, either alone or jointly with any other person through or as manager, adviser, agent, consultant, employee or agent for a shareholder in any person, firm or company directly or indirectly carry on or be engaged or concerned or interested in the provision of retailing books, magazines, stationary items."

Hence, there is a clear non-compete clause. Section 28 (va) of the Income Tax Act states that,

"any sum, whether received or receivable, in cash or kind, under an agreement for-

(a) not carrying out any activity in relation to any business [or profession]; or

(b) not sharing any know-how, patent, copyright, trade-mark, licence, franchise or any other business or commercial right of similar nature or information or technique likely to assist in the manufacture or processing of goods or provision for services:"

There is a clear cut restriction on the assessee to carry out any business in the field of retailing books, magazines, stationary items. Hence, as per the provisions of section 28 (va) of the Income Tax Act, the amount received in return for this is in the nature of business receipts. The assessee however, has shown the consideration received under the head Long Term Capital Gains, whereas it should be taxable as a business income @ 30% tax. Hence, this net receipt is re-classified as Income from Business and taxed at 30%.

The assessment is completed and the total income is computed as under:

a	Income from Salary	2,32,10,958
b	Income from House Property	3,94,164
c	Add: Income from Business	37,91,81,584
d	Income from Sgort Term Capital Gains	51,76,003
e	Income from Other sources	1,06,916
	Assessed Income	40,80,69,625

Tax Calculation sheet and demand notice are enclosed separately.

Since the assessee Individual has furnished Inaccurate particulars of Income, Penal Proceedings u/s 271 (1) (c) of the Income Tax Act, 1961 are initiated separately.

27.I have considered the arguments advanced by the learned Senior Counsel for the petitioner and the learned Senior Standing counsel for the respondent.

28.For the Assessment Year 2009-10, the petitioner filed returns on 27.11.2009. Thereafter, a notice under Section 142(1) of the Income Tax Act, 1961 was issued to the petitioner on 11.07.2011 to finalise the assessment. Thereafter, an Assessment Order dated 21.12.2011 was passed by the respondent under Section 143(3) of the Income Tax Act, 1961. Thereafter, the petitioner suo moto approached the respondent for rectification of mistake under Section 154 of the Income Tax Act, 1961 on 29.12.2011. However, no order was passed in the application filed by the petitioner for rectification of mistake.

29.Thus, it is clear that almost after five years, the petitioner's scrutiny Assessment was completed and thereafter clarification sought from the petitioner vide letter dated 05.02.2014. The petitioner replied to the said notice through its Chartered Accountants on 05.03.2014.

30.The petitioner filed return along with annexure. This resulted in passing of the impugned order of assessment on 29.12.2016 by the respondent. The petitioner filed a further appeal before the Appellate Commissioner. At the stage of consideration of stay application, the petitioner has approached this Court stating that the notice was issued dated 31.03.2016 under Section 148 of the Income Tax Act, 1961 to re-open the assessment to re-assess the income was clearly barred under law as it was on account of change of opinion of the respondent.

31.It is noticed that before regular scrutiny assessment was completed, on 11.07.2011 details were called from the petitioner. The petitioner furnished the same vide letter dated 11.08.2011. Thereafter, notice under Section 142(1) was issued, which called upon the petitioner to furnish shareholder agreement dated 01.04.2006 with Land mark and other particulars. These were furnished by the petitioner on 04.11.2011. Thus, there was full disclosure by the petitioner.

32.That apart, the reason to invoke proviso to Section 147 r/w. Section 148 is not the basis of impugned order. The amount which has been made liable to tax in the impugned order dated 29.12.2016 was subject matter of discussion with the respondent prior to passing of the impugned notice dated 31.03.2016 vide communications exchanged pursuant to letter dated 05.02.2014 seeking clarification from the petitioner. After the scrutiny assessment order dated 21.12.2011 came to be passed, the said letter dated 05.02.2014 was issued to the petitioner calling upon the petitioner to furnish explanation regarding computation of income.

33.In the said notice dated 05.02.2014, it was stated that non-compete covenant on its own cannot amount to transfer of any right and therefore the amount received by the petitioner was to be taxed under Section 28(va) of the Income Tax Act, 1961. Having entertained a view that the amount received under the said Clause in the agreement was to be taxed under Section 28 (va) of the Income Tax Act, 1961, the respondent ought to have issued a notice within 4 years from the relevant date under Section 148 r/w. Section 147 of the Income Tax Act, 1961.

34.After notice dated 31.03.2016 was issued after invoking the jurisdiction under Section 148 read with proviso to Section 147 of the Income Tax Act, 1961, on 08.12.2016, the petitioner was asked to explain the profit arising from the agreement and why it should be treated as business profit and not as Long Term Capital Gain as shown by the petitioner. The petitioner replied to the same on 14.12.2016.

35. From a over all reading of the facts, it is clear that the respondent has sought to re-surrect a stale issue which had already been examined during the course of regular assessment pursuant to which assessment order was passed on 21.12.2011 but was also a subject matter of discussion pursuant

to letter dated 05.02.2014 of the respondent.

36.The last date of the assessment year 2009-10 was 31.03.2010. Therefore, the respondent was entitled to issue such a notice under Section 148 on or before 31.03.2014 i.e within 4 years for the purpose of Section 147 of the Act. Instead, the respondent failed to issue a notice in time and obtained permission from the Pr. Commissioner of Income Tax - 5, Chennai on 30.03.2016 at the eleventh hour by giving an altogether different reason for issuing notice under Section 148 of the Income Tax Act, 1961.

37.The reasons given that the respondent had a belief that the income had escaped assessment for invoking Section 148 on 31.03.2016 is in complete variance with the reasons given in the impugned order dated 29.12.2016. It shows that the impugned order has been passed due to change of opinion of the respondent which was entertained on 05.02.2014. After missing an opportunity which came to the respondent within the period of 4 years seeking clarification from the petitioner, Section 148 of the Income Tax Act, 1961 was invoked.

38.Since the invocation of jurisdiction under Section 148 for the purpose of proviso to Section 147 of the Income Tax Act, 1961 on 31.03.2016 was in variance with the so called recommendation/ concurrent & permission of the Assistant Commissioner of Income Tax & Pr. Commissioner on 29.03.2016 & 30.03.2016, the impugned order cannot be sustained. It also does not state that there was failure on the part of the petitioner to disclose fully and truly all material facts necessary for the purpose of the assessment for the assessment year.

39.In my view, the entire proceedings were based on the change of view. Further, having entertained a view as early as 05.02.2014 that amount was a business income, the respondent ought to have issued the notice on or before 31.03.2014. Instead, the respondent waited till 31.03.2016 to issue notice to the petitioner. Therefore, the impugned order cannot be sustained.

40.Though under similar circumstances, the Hon'ble Supreme Court in Kisan Agro Mart (P.) Ltd. Vs. Income Tax Officer, [2019] 109 taxmann.com 496 (SC), had directed the appellant therein to workout the remedy before the Appellate Commissioner, it is evident there is no ratio discernible from such direction.

Therefore, the said decision cannot be applied to four corners of the facts of the present case.

41.The Hon'ble Supreme Court in P.Singaravelan & Ors. Etc. Vs. The District Collector, Tiruppur and DT & Ors. Etc., 2019 SCC OnLine SC 1641, has also held that non speaking order is not affirmation of High Court order.

42.In the light of the above discussion, the present Writ Petition stands allowed. No cost. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To
Assistant Commissioner of Income Tax,
Non Corporate Circle 3,
Income Tax Department,
Room No.623-A, VI Floor,
New Block, Aayakar Bhawan,
No.121, M.G.Road, Nugambakkam,
Chennai - 600 034.

+1 cc to M/s.C.Uma Advocate sr2632
+1 cc to M/s.Hemamuralikrishnan Standing Counsel sr2442

W.P.No.3978 of 2017
and
W.M.P.Nos.4063 to 4065 of 2017
and W.M.P.No.31996 of 2015

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