IN THE HIGH COURT OF JUDICATURE OF MADRAS

RESERVED ON : 16.09.2020

PRONOUNCED ON : 30.09.2020

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.2818 of 2017
and WMP.No.2754 of 2017

S.Kamarasu ... Petitioner

Vs.

The Income Tax Officer,
Non Corporate Ward-15(2),
Room No.205, II Floor,
Wanaparthy Block,
Aayakar Bhawan, 121, M.G. Road,
Nungambakkam,
Chennai-600 034. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records in assessment order under Section 143 (3) r/w Section 147 of the Income Tax Act, 1961 dated 30.12.2016 on the file of the respondent relating to the Assessment Year 2009-10 and quash the same.

For Petitioner : Mr.M.P.Senthil Kumar

For Respondent :Mr.A.P.Srinivas, Sr.S.C

O R D E R

With the consent of both parties, the present Writ Petition is heard through Video Conferencing on 16.09.2020.

2. The petitioner, along with his wife, purchased a property in Chennai on 09.05.2008 for a sale consideration of Rs.1,67,54,730/-, which includes registration charges and had filed his return of income on 30.09.2009 for the Assessment Year 2009-10, which was processed under Section 143(1) of the Income Tax Act. The guideline value of the property, as per the records of the concerned Sub-Registrar, was at Rs.1,94,95,000/-. During scrutiny, the Assessing Officer raised the issue of quoting the property value at a lesser amount in the returns, to which the petitioner had given his explanation with regard to the sources and reasons for purchasing the property at a lesser price. In this background, the assessment under Section 143(3) was completed.

3. On 30.03.2016, the respondent issued a notice under Section 148 to reopen the assessment for the Assessment Year 2009-10. In response, the petitioner requested to treat the returns already filed on 30.09.2009 as returns, in response to the notice under Section 140. The request came to be rejected and the assessment under Section 143(3) was completed through the impugned assessment order dated 30.12.2016.

4. The learned counsel for the petitioner submitted that the notice under Section 148 on 30.03.2016 was beyond the period of four years and therefore, is barred by limitation in view of the proviso to Section 147 of the Act.

5. Mr.A.P.Srinivas, learned Senior Standing Counsel for the department, by placing reliance on the statements made in the counter affidavit submitted that though the petitioner had given the sale value of the property in Annexure 1-A of the sale deed at Rs.1,94,95,000/-, the petitioner had adopted a lesser purchase value in the balance sheet and therefore, the department cannot be found fault with while passing the impugned assessment order.

6. At the outset, it deserves to be mentioned that the Writ Petition requires to be allowed on the ground that the notice under Section 148 is barred by limitation. It is seen that the notice under Section 148 was issued on 30.03.2016 for the Assessment Year 2009-10. Under the proviso to Section 147 of the Income Tax Act, the department was entitled to issue the notice on or before 31.03.2014, on which date, the four year period prescribed under this Section, expires. Apparently, the notice under Section 148 dated 30.03.2016 is beyond the period of six years and as such, the notice itself is bad in law, since barred by limitation. As such, the consequential impugned assessment order dated 30.12.2016, cannot be sustained.

7. Insofar as the objections raised by the learned Senior Standing counsel for the department is concerned, the submission that the petitioner had disclosed the full value in Annexure 1-A of the sale deed and that he had shown a lesser amount in the returns, cannot be sustained for two reasons. Firstly, such a reasoning was not assigned while the petitioner's objections were considered at the time of passing the assessment order. This ground of objection has been brought in the first time by way of a counter affidavit, which is impermissible. Secondly, Annexure 1-A is a statement made along with sale deed presented for registration and the value of Rs.1,94,95,000/- is only a guideline, whereas the recitals in the sale deed evidences that the property was purchased at Rs.1,50,00,000/-. Therefore the guideline value shown in the Annexure 1-A of the sale deed, cannot be construed to be an actual sale value and therefore the consequential decision that the petitioner had under quoted the sale amount in the

returns, cannot be accepted. Nevertheless, it is made clear that this Court is not expressing its views that the sale price shown in the Sale Deed would be conclusive evidence for determination.

8. For all the foregoing reasons, the impugned assessment order dated 30.12.2016 cannot be sustained since it is barred by limitation and accordingly, the same stands quashed. Consequently, the Writ Petition stands allowed. Connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

The Income Tax Officer,
Non Corporate Ward-15(2),
Room No.205, II Floor,
Wanaparthy Block,
Aayakar Bhawan, 121, M.G. Road,
Nungambakkam,
Chennai-600 034.

+1 cc to Mr.AP.Srinivas, Advocate,sr.32120.

Nrjk(co)
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