IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 31.03.2021
PRONOUNCED ON : 02.06.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.16311 of 2013 and 18671 of 2017
and W.M.P.No.20208 of 2017

W.P.No.16311 of 2013:-

C.B.Srinivasan .. Petitioner

vs

1.The I.T.Officer, Investigation,
Race Course Road, Coimbatore - 641 018.

2.The Income Tax Officer,
Ward III(4),
Race Course Road,
Coimbatore - 641 018. .. Respondents

Prayer in W.P.No.16311 of 2013:- Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of declaration, declaring that, the survey conducted by Respondent 1 in D.No.288, Karuppanna Gounder Street, Coimbatore 641 001 on 03.09.2012 is illegal and ultra-vires the provisions of Income Tax Act, 1961 and consequently forbear the Respondents from relying upon the details of the survey during the assessment or any other proceedings.

W.P.No.18671 of 2017:-

C.B.Srinivasan .. Petitioner

vs

1.The I.T.Officer, Investigation,
Race Course Road, Coimbatore - 641 018.

2.The Assitant Commissioner of Income Tax,
Non Corporate Circle - 1,
Coimbatore - 641 018. .. Respondents

Prayer in W.P.No.18671 of 2017: Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari, to call for the records relating to the proceedings of the 2nd respondent under Section 147 initiated by notice dated 24.03.2017 to the petitioner, PAN AJNPS2191Q for the Assessment Year 2013-14 and quash the same.

For Petitioner : Mr.Niranjan Rajagopalan
(in both W.Ps) for Mr.G.R.Associates
For Respondents : Mr.A.P.Srinivas,
(in both W.Ps) Senior Standing Counsel

C O M M O N O R D E R

By this common order, both these writ petitions are being disposed. W.P.No.16311 of 2013 has been filed for a declaration to declare the survey conducted by the 1strespondent on 03.09.2012 as illegal and ultra-vires in the provisions of the Income Tax Act, 1961 and consequently forbear the respondents from relying upon the details of the survey during the assessment or any other proceedings.

2.W.P.No.18671 of 2017 has filed to call for the records relating to the proceedings of the 2nd respondent under Section 147 of the Income Tax Act initiated vide notice dated 24.03.2017 against the petitioner, PAN AJNPS2191Q for the Assessment year 2013-2014 and to quash the same.

3.The brief facts of the case is that the survey under Section 133A of the Income Tax Act was conducted at the business premises of the petitioner which is adjacent to the petitioner's residence.

4.In the survey that was conducted on 03.09.2012 at the business premises of the petitioner, it was found that the petitioner had Gold and Silver jewellery valued for a sum of Rs.2,93,03,700/- which were not disclosed by the Petitioner.

5.A Notice dated 04.12.2015 under Section 148 of the Income Tax Act was issued to the petitioner pursuant to a survey at the petitioner's premises on 03.09.2012conducted by the Income Tax Officer.

6.By communication dated 09.11.2016 the reasons for re-opening of the assessment under Section 148 of the Income Tax Act was furnished to the petitioner. The reasons stated for re-opening the assessment reads as under:

> During the course of survey conducted on 03.09.2012, the assessee has admitted excess cash of Rs.4,81,000/- unexplained investment of Rs.17.60 lakhs and excess stock of gold jewellery and silver to the tune of Rs.2,93,03,700/- as undisclosed income. But the assessee has not disclosed the same in the return of income for the Assessment year 2013-

14.

Hence I have reasons to believe that the income chargeable to tax has escaped assessment within the meaning of Section 147. Therefore, the case has been reopened under Section 147 of the Income Tax Act, 1961.

7. Since the period of nine months for completing the assessment pursuant to notice issued on 04.12.2015 under Section 148 of the Income Tax Act, 1961 had expired on3.9.2015 in terms of Section 153(2) of the said Act, the respondentdropped the proceeding initiated vide notice dated 04.12.2015 by a communication dated 26.12.2016 which reads as under:

To
Shri C.B.Srinivasan,
288, Karuppa Gounder Street,
Coimbtaore - 1.

Sub:Assessment proceedings - A.Y.2013-14-your own-reg.

Ref:Pending Scrutiny assessment proceedings in your case.

Please refer to the above.In this regard, it is hereby informed that above mentioned reopened scrutiny proceedings initiated by issued notice u/s 148 dated 04.12.2015 is hereby dropped.

8.Thereafter, the impugned notice dated 24.03.2017 was issued to the petitioner under Section 148 of the Income Tax Act, 1961. The reasons for re-opening of the assessment as communicated to the petitioner vide communication dated 09.06.2017 reads as under:

For the A.Y.2013-14, the reasons for reopening is that ''during the course of survey conducted on 03.09.2012, it was found that the assessee has not maintained any books of account for his business. However, as per materias impounded on record and as per physical stock valuation vide Annexure CBS/Jewels/Stock/f pages 01 to 03 dated 03.09.2012 and Annexure CBS/PS/Silver/f page 01 dated 03.09.2012, the assessee had unaccounted stock of gold and silver jewellery as below:

(i)Gold (10,319.38 gms) -Rs.2,88,94,264/-

(ii)Silver (8971 gms) - Rs.4,09,436/-

Moreover, as per Annexure CBS/PS/Cash/f, the assessee was in possession of unaccounted case amounting to Rs.4,81,000/-. On further enquiry based on impounded material Annexure CBS/PS/B&D/Imp.S.No.1 to 8 and books of account prepared by the assessee subsequently in tally from 01.04.2006 based on bank transaction, property acquired, IT returns filed and expenditures incurred, it was found that there was a cash deficit of Rs17,60,000/- including unaccounted investment of Rs.15,00,000/- in a property.

Hence, the total unaccounted income found as a result of survey u/s 133A is tabulated as under:

Unaccounted investment in Gold	-Rs.	2,88,94,264/-
Unaccounted investment in Silver	-Rs.	4,09,436/-
Unaccounted Cash	-Rs.	4,81,000/-
Cash deficit	-Rs.	17,60,000/-
Total	-Rs.	3,15,44,700/-

The assessee had admitted the same as unaccounted that needs to be brought for taxation vide statements recorded from the assessee. But in the return of income filed by the assessee for A.Y.2013-14 on 06.12.2013, the assessee had admitted income of Rs.61,67,690/- only and failed to admit the difference of Rs.2,53,77,610/- as per survey findings.

9.The learned counsel for the petitioner placed the reliance on the decision of the Gujarat High Court in Kunal Organics (P) Ltd Vs. Deputy Commissioner of Income-tax [2014] 44 taxmann.con 323 (Gujarat). He further submits that dealing with an identical situation where notice under Section 148 was issued before completion of the Assessment was dropped and thereafter, a fresh notice was issued based on the identical reasons was held not maintainable. The learned counsel for the petitioner therefore submits that the both writ petitions are to be allowed.

10.Defending the impugned proceedings and the impugned notice issued under Section 148 of the Income Tax Act, the learned counsel for the respondentMr.A.P.Srinivas, submits that as far as survey conducted on 03.09.2012 is concerned, it was conducted at the business and the residence of the petitioner, which are adjacent to each other. He submits that the material were not be seized as only a survey was conducted on 03.09.2012 under Section 133Aof the Income Tax Act, 1961.

11.The learned counsel for the respondent further submits that the impugned notice dated 24.03.2017 was within a period of limitation and therefore the present writ petition was liable to be dismissed. He further submits that though at the time of survey undisclosed income and the ornaments were found they could not be seized on account of under Section 133A of the Income Tax Act.

12.The learned counsel for the petitioner by way of re-joinder submits that the proceedings are contrary to Section 153 sub-clause 2 of the Income Tax Act, 1961.

13.I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the Income Tax Department. Facts are not in dispute. A survey under Section 133A of the Income Tax Act, 1961 was conducted on 03.09.2012 at the business premises of the petitioner which shared a common passage with the residence of the petitioner.

14.The survey revealed undisclosed income in terms of the valuable jewellery and cash. The petitioner should have therefore voluntarily offered the amount found during the survey for payment of Income Tax during the assessment year 2013-14 in his returns. This was apparently not done in his return. The last date for completing the assessment for the said assessment year would have expired on 31.12.2016.

15.Since the petitioner failed to offer amount for payment of Income Tax in his return of income under Section 139 of the Income Tax Act, 1961, a notice dated 04.12.2015 was issued to the petitioner under Section 148 of the Income Tax Act, 1961. The said notice was issued even before the time for completing the assessment expired on 31.12.2016 i.e, 21 month from the end of the assessment year 2013-14 under Section 153 (1) of the Income Tax Act, 1961 for the assessment year 2013-14.

16.Having issued the aforesaid notice dated 04.12.2015 under Section 148 of the Income Tax Act, 1961, it was incumbent to have completed assessment within a period of nine months as per Section 153(2) of the Income Tax Act, 1961 from the date of issue of the said notice.

17.Since the period of nine months expired on 03/04.09.2016 in terms of Section 153(2) of the Income Tax Act, 1961, which is three months before the last date for completing the assessment on 31.12.2016, the officer therefore could not have proceeded further after the expiry of the nine months on the strength of the said proceeding initiated on 04.12.2015 after the first week of the September, 2006.

18.Thus, there was a deemed assessment. Thus, there is no infirmity in the impugned proceeding after the earlier proceeding initiated vide notice dated 4.12.2015 was withdrawn was withdrawn vide communication dated 26.12.2016.

19.The respondent can issue a fresh notice under Section 148 of the Income Tax Act, 1961 which is what the respondent has done. It is to be emphasized that after 31.12.2016, the respondent had 4 years to invoke section 148 of the Income Tax Act 1961.

20.Communication dated 26.12.2016 merely states that the proceedings initiated under Section 148 of the Income Tax Act, 1961 on 04.12.1996 was being dropped. There was no reasons given for dropping the said proceedings. It cannot come in the legitimate way of proper assessment of income tax.

21.Thus, the dropping of the earlier proceedings was only on account of technical reasons. It was not after a thorough scrutiny and consideration of the reply of the petitioner. It was withdrawn only for technical reason to pave way for issue of a fresh notice under Section 148 of the Income Tax Act, 1961 on 24.03.2017. The earlier proceedings initiated vide Notice dated 4.12.2015 was not dropped on merits.

22. Issuance of earlier notice under Section 148 of the Income Tax Act, 1961 did not preclude issue of fresh notice under the same section on 24.3.2017.

23.The petitioner has indulged in large scale evasion of tax as is evident from the survey conducted on 03.09.2012.Since the re-assessment proceeding remained inconclusive, there is no case made for interference. Therefore, the decision of the Gujarat High Court cannot be applied to the four corners of the facts of the case.

24.I therefore do not find any merits in these present writ petitions. Therefore, I am inclined to dismiss these writ petitions. Petitioner may at his discretion and if advised may file additional representation/reply if any, before the respondent on merits within a period of 30 days from the date of receipt of a copy of this order. The respondent shall consider such reply if any and thereafter pass orders on merits.

25.Since the dispute pertains the assessment year 2013-14, the respondent shall endeavour to complete the assessment initiated vide impugned notice dated 24.03.2017 within a period of 90 days from date of receipt of this order.

26.In the light of the above observations and reason given, these writ petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

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W.P.Nos.16311 of 2013 and 18671 of 2017
and W.M.P.No.20208 of 2017

PM CO
A.SK(01.07.2021)