IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.04.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.3935 of 2020 and
WMP.Nos.20453, 4662 & 4663 of 2020

K.Suresh …Petitioner

Vs.

The Assistant Commissioner of Income Tax,
Non-Corporate Circle-1,
Room No.309, 3rd Floor, Wanaparthy Block,
No.121, MG Road, Nungambakkam,
Chennai-600 034. …Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Certiorari, to call for the order u/s.143(3) r.w.s. 148 dated 25/03/2019 in ITBA/AST/S/148/2018-19/1015400780(1) along with all consequential proceedings including the Order u/s.159 dated 17/12/2019 in ITBA/AST/F/17/2019-20/1022530940(1), and the order u/s. 144 r.w.s. 147 dated 21/12/2019 having document No.20121148064 passed by the respondent for Asst. Year 2012-13 and quash the same as illegal.

For Petitioner : Mr.K.Ravi

For Respondent : Mr.Prabu Mukunth Arunkumar
Junior Standing Counsel

O R D E R

Heard Mr.K.Ravi, learned counsel for the petitioner and Mr.Prabu Mukunth Arunkumar, learned Junior Standing Counsel for the respondent.

2.The challenge is to an order of assessment dated 21.12.2019 passed under Section 144 read with Section 147 of Income Tax Act, 1961 (in short 'Act') for assessment year (AY) 2012-13. This writ petition has been filed by one Suresh in his capacity as legal representative of Kalyanasundaram Mangalam, his mother, who had passed away on 16.04.2017.

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3. The sequence of dates and events is as follows:

(i) A notice under Section 148 of the Act dated 31.03.2017 was issued to K.Mangalam. Upon her demise on 16.04.2017, proximate to the issuance of notice, the factum of her demise is stated to have been communicated to the Assessing Officer under communication dated 13.06.2017. Though there is an acknowledgment of having issued this letter, no acknowledgment is placed for receipt of the same by the Assessing Officer.

(ii) On 27.07.2017, a communication has been received from the Assessing Officer, again addressed to K.Mangalam, calling upon her to appear and explain certain transactions in FY 2011-12 relevant to AY 2012-13.

(iii) There was radio silence thereafter, and on 25.03.2019, a second notice under Section 148 of the Act was issued for the same assessment year, again addressed to K.Mangalam.

(iv) On 20.06.2019 the Assessing authority addresses a reminder to K.Mangalam calling for a return in response to the notice under Section 148.

(v) The factum of the demise of K.Mangalam was once again brought to the attention of the officer by letter dated 19.12.2019 filed by the petitioner.

(vi) An order has thus come to be passed on 17.12.2019 bringing on record K.Suresh, the petitioner herein, as a legal representative for all tax dues. He was called upon to comply with notices for Income Tax proceedings and clear arrears, if any, in the Income Tax proceedings of K.Mangalam.

(vii) A show cause notice dated 18.12.2019 was thereafter issued to the petitioner in his capacity as the legal heir of K.Mangalam.

(viii) Reply dated 19.12.2019 was filed, wherein an objection is raised to the assumption of jurisdiction by the assessing officer since the notice has been issued in the name of K.Mangalam, who has passed away on 16.04.2017 itself, such fact having been brought to the notice of the Assessing authorities.

(ix) In any event and without prejudice to the contention that the notice has been issued to a dead person, the Assessing

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Officer was alerted to the fact that K.Mangalam had left behind six legal representatives and hence notices, as legal representatives, should be issued to all of them and not just to the petitioner herein. No acknowledgment is placed for having filed this letter except that on 27.12.2019, the Chartered Accountant of the petitioner has sent a letter to the Assessing authority confirming the position that reply dated 19.12.2019 was handed over to the Assessing Officer in person.

(x) Again, there is only a record of issuance of this letter dated 27.12.2019 and no record of receipt of the same. This has come to culminate in the impugned order passed in the name of the petitioner as legal heir of K.Mangalam. No reference is made to the petitioner's reply dated 19.12.2019 and the entire bank balance in the account of the petitioner in Axis Bank is brought to tax as undisclosed income.

4.The procedure followed by the revenue in this matter is contrary to the requirement that, proceedings for assessment, in order to be valid, should be preceded by notices that are issued to the assessee in question. No doubt, notice issued under Section 148 on 31.03.2017 is valid. However, for reasons best known to the Assessing Officer, this notice has not culminated in an order of assessment and has been allowed to lapse. The second notice dated 20.06.2019 has been again issued to K.Mangalam, despite the Assessing officer having been intimated that she has passed away on 16.04.2017.

5. The counter affidavit filed by the respondent does not anywhere dispute the position that the Income Tax Department was unaware of the demise of K.Mangalam on 16.04.2017 though this is the sheet anchor of the petitioner's case.

Thus, the non production of an acknowledgment from the Assessing officer in this case may not be material, since there is no averment in the counter denying this position. Even before me, learned counsel for the revenue does not dispute the fact.

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6. I thus proceed on the basis that the intimation filed by the petitioner on 13.06.2017, enclosing the death certificate of K.Mangalam is well within the knowledge of the Assessing Officer. All proceedings issued thereafter in the name of K.Mangalam are invalid including notice under Section 148 dated 25.03.2019 and order of assessment dated 21.12.2019 are held to be invalid.

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7.In the light of the discussion as aforesaid, this writ petition is allowed. Connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

vs
To

The Assistant Commissioner of Income Tax,
Non-Corporate Circle-1,
Room No.309, 3rd Floor, Wanaparthy Block,
No.121, MG Road, Nungambakkam,
Chennai-600 034.

+1cc to M/s.Hema Muralikrishnan, Advocate Sr.25136

W.P. No.3935 of 2020 and
WMP.Nos.20453, 4662 & 4663 of 2020

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srg 06/07/2021

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