IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 11.03.2021
CORAM:
THE HONOURABLE MR. JUSTICE C.SARAVANAN
W.P.No.14253 of 2016
and
W.M.P.No.12448 of 2016

Sharad Kumar ... Petitioner

Vs.

The Assistant Commissioner of Income Tax,
Non Corporate Circle 20(1),
Room No.311, 3rd Floor,
Wanaparthy Block,
121 MG Road, Nungambakkam,
Chennai - 600 034. ... Respondent

PRAYER:- Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari, to call for the records of the respondent contained in its Assessment Order dated 30.03.2016, passed under Section 143(3) read with Section 147 of the Income Tax Act, 1961 in PAN AASPS2554F for the Assessment Year 2008-2009 assessing the petitioner's total income at Rs.4,08,12,500/- and to quash the same.

For Petitioner : Mr.Suhrith Parthasarathy

For Respondent : Mr.Prabhu Mukunth Arunkumar
Standing Counsel

O R D E R

The petitioner has challenged the impugned assessment order dated 30.03.2016 passed by the 1st respondent pursuant to the reopening of the assessment notice dated 31.03.2015 under section 148 of the Income Tax Act, 1961. The respondent has also given reasons for reopening the assessment prior to passed in the impugned order vide communication dated 26.08.2015 which reads as under:

> ''The letter from Deputy Director of Income Tax (Investigation), Chennai, dated 30.03.2015 states that the assessee has paying an amount of Rs.2 crores to Savings Bank account to M/s.Kalaignar Television Limited during the year 2007-08''.

2.However, after the petitioner had filed a detailed representation dated 03.09.2015 against reopening of the assessment the respondent has proceed to pass the impugned assessment order dated 30.03.2016 and therefore it is sought to be assailed on the ground that the impugned proceedings are unsustainable.

3.Defending the impugned order, the learned counsel for the respondent submits that the reasons for that petitioner's representation dated 03.09.2015 was considered by the Assistant Commissioner of Income Tax. The respondent herein, an order dated 29.01.2016 had been communicated pursuant to which the impugned assessment has been passed. He therefore prays that the impugned assessment order dated 30.03.2016 is sustainable and the present writ petition is liable to be dismissed.

4.Heard the learned counsel for the petitioner and the learned counsel for the respondent.

5.Today, when the case was taken up for hearing, the learned counsel for the respondent Income Tax Department has filed a copy of the communication dated 29.01.2016 bearing reference No.ACIT-NCC-20/2015-16. The content of the said letter is reproduced below:

> Sub:Reopening u/s 148 in the case of Shri.R.Sharad Kumar, PAN No.AASPS2554F for Assessment Year 2008-09-Reasons-Reg.
>
> Ref:Your letter dated 03.09.2015.
>
> Please refer to the letter under reference objecting to reasons for reopening the assessment in your case for Assessment Year 2008-09.
>
> The objections are not acceptable as you have not furnished evidences in support of your claim. The entries in bank account and the nature of transactions and all bank accounts are to be furnished. In these circumstances, the claim reopening is based on ''same set of facts'' is not with any basis. Hence it is rejected.

6.The above said letter is purportedly a speaking order passed in the light of the decision of the Hon'ble Supreme Court in G.K.N Drive Shafts India Ltd. Vs Income Tax Officer, 259 ITR 19 (SC). A perusal of the above communication dated 29.01.2016 the relevant portion shows this is a non speaking order and merely conveys the decision over ruling the objection of the petitioner. The exercise carried out by the respondent was contrary to the decision of the Hon'ble Supreme Court in G.K.N Drive Shafts India Ltd. Vs Income Tax Officer, 259 ITR 19 (SC).

7.Therefore the impugned assessment order passed by the respondent is liable to be quashed. Under these circumstances, the impugned assessment order dated 30.03.2016 is quashed by directing the respondent to pass a speaking order in terms of the decision of the supreme Court in G.K.N Drive Shafts India Ltd. Vs Income Tax Officer, 259 ITR 19 (SC) within a period of three months from the date of receipt of a copy of this order. Thereafter, the assessment proceedings can be completed in accordance with law.

8.Accordingly, this writ petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS III)

/TRUE COPY/

Sub-Assistant Registrar

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To

The Assistant Commissioner of Income Tax,
Non Corporate Circle 20(1),
Room No.311, 3rd Floor,
Wanaparthy Block,
121 MG Road, Nungambakkam,
Chennai - 600 034.

+1CC TO M/S.HEMA MURALIKRISHNAN, ADVOCATE, SR.NO. 16339
+2cc to Mr.ARUN KARTHIK MOHAN,Advocate, SR.NO. 11331,15505

W.P.No.14253 of 2016
and
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PMK(CO)
KKN 20.04.2021