IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2021

CORAM :

THE HON'BLE MR. JUSTICE T.S.SIVAGNANAM
AND
THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

W.A.No.1777 of 2021
and
C.M.P.No.11108 of 2021

S.Ganesan ...Appellant/Petitioner

Vs.

The Asst. Commissioner of Income Tax,
Non-Corporate Circle, 15(1)
121, Nungambakkam High Road,
Chennai – 600 034. ...Respondent/Respondent

Prayer : Writ Appeal filed under Clause 15 of the Letters Patent to set aside the order dated 23.04.2021 made in W.P.No.34075 of 2017.

Prayer in W.P.No.34075 of 2017:-

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, quash the impugned notice issued u/s.148 of the Act in Pan No.AAZPG3716G/ACIT/NCC/A.Y.2010-11 dated 31.3.2017 and consequentially quash the proceedings in Pan : AAZPG3716G/Reply to objections/NCC 15(1)/2017-18 dated 22.12.2017 as illegal and without jurisdiction.

For Appellant : Mr.R.Sivaraman

For Respondent : Mr.A.N.R.Jayaprathap
Standing Counsel

J U D G M E N T

(Judgment was delivered by T.S. SIVAGNANAM, J.)

This Writ Appeal filed by the writ petitioner is directed against the order, dated 23.04.2021, in W.P.No.34075 of 2017.

2.The writ petition was filed challenging the proceedings of the respondent/Assessing Officer, dated 31.03.2017, initiated under Section 148 of the Income Tax Act, 1961 (“the Act” for brevity) and to quash the consequential proceedings, dated 22.12.2017, as being without jurisdiction and illegal.

3.The assessee is an individual and for the Assessment Year under consideration, AY 2010-11, he had filed return of income on 30.07.2010 declaring a total income of Rs.4,46,870/-. The return was processed under Section 143(1) of the Act on 08.04.2011 and subsequently, the assessment was taken up for scrutiny and notice under Section 143(2) of the Act was issued and the Assessing Officer called for details. The details were furnished by the assessee and one of the details called for was in respect of the property which was sold by the assessee during the Financial Year 2009-10 for a consideration of Rs.5,67,30,000/-. The Assessing Officer questioned the assessee by stating that the capital gains was not offered to tax by the assessee in the returns for the AY 2010-11. The assessee explained by stating that the property was transferred and possession was handed over to M/s.Vinayaga Land Developers, a partnership firm, for a sale consideration of Rs.1,07,18,000/- through a sale agreement dated 15.12.2003 and a registered Power of Attorney executed in favour of the partner of the firm to sell the property. A copy of the sale agreement and the Power of Attorney were placed before the Assessing Officer for consideration. The Assessing Officer issued summons to the partner of the partnership firm, in whose favour the registered Power of Attorney was executed. The assessee was also summoned and after recording the statements given by all the parties, the Assessing Officer was satisfied and accordingly, completed the assessment under Section 143(3) of the Act, by order dated 12.03.2013.

4.This assessment was sought to be reopened by issuance of notice dated 31.03.2017. The assessee sought for reason for reopening, which was furnished by the respondent along with letter dated 06.10.2017. On a perusal of the reasons, the assessee came to know that the only reason for reopening is the sale transaction that took place in the previous year, i.e., 2009-10 relating to Assessment Year 2010-11, when the Power Agent has executed the sale deed. Therefore, the Assessing Officer opined that he has reasons to believe that the income chargeable to tax has escaped assessment. The assessee submitted his reply, dated 21.10.2017, pointing out as to how the Assessing Officer has sought to reopen the assessment after it was completed under Section 143(3) of the Act and also having taken note of the facts that the assessee had in his return of income filed for AY 2004-05 had disclosed the transaction and the details of the long term capital gains were furnished and intimation was issued under Section 143(1) for AY 2004-05 vide notice dated 01.07.2005, in response to which, the assessee had submitted the proof of having deposited the capital gains as envisaged under Sub-Section 2 of Section 54 of the Act in the Indian Bank and a letter given by the Bank dated 07.08.2005 was also produced and subsequently, rectification order was also passed on 18.08.2005. Further, in the return of income filed for AY 2006-07 dated 31.10.2006, the assessee had disclosed the long term capital gain and had also paid taxes and the assessment was accordingly completed under Section 143(3) of the Act by order dated 30.10.2008. Therefore, the assessee would submit that there was no fresh tangible material for reopening the assessment and it was a clear case of change of opinion. The objections raised by the assessee were disposed of reiterating what had been stated in the reasons for reopening. It was the argument of the learned counsel for the assessee that the Assessing Officer did not form an opinion by himself that he had reason to believe that income has escaped assessment to tax, rather he has verbatim copied the audit objections raised by the Audit Wing, which came to the knowledge of the appellant/assessee when he obtained information under the Right to Information Act, which was furnished to the assessee much thereafter.

5.The learned Single Bench was of an opinion that the Income Tax authorities are entitled to reopen the proceedings to examine the genuineness and validity of the transactions and also whether the transactions are legal transactions recognized under the provisions of the Act. Further, the learned Single Bench was of the view that, Power of Attorney alone was executed by the appellant/assessee in the year 2003 and admittedly, the Power Agent sold the property only during the Assessment Year under consideration and therefore, the assessee should raise all grounds before the Assessing Officer and avail the remedies under the provisions of the Act.

6.In our considered view, moot question which was required to be decided in the writ petition was whether the reopening of the assessment was valid and whether it is a case of change of opinion. For such an exercise, the only issue to be considered was whether there was a transfer of the immovable property during the previous year relevant to AY 2004-05 or did the transfer take place at the behest of the appellant/assessee in the Assessment Year 2010-11.

7.Therefore, to decide the said question, we are guided by the definition of transfer as defined under Section 2(47) of the Act. If the assessee had executed the agreement of sale on 15.12.2003 and executed the registered General Power of Attorney on 19.12.2003 in favour of the partner of the partnership firm, which was the purchaser in the sale agreement irrevocably empowering the Power Agent to sell the property in whole or in pieces, and also admitted having receiving the full sale consideration and put the purchaser in possession of the property in question, then all elements of transfer as envisaged under Section 2(47) of the Act stood complied with. Added to that, the assessee has filed his return of income for the Assessment Year 2004-05 and has offered the sale consideration for capital gains and deposits were made in the Bank Account. All these aspects were called for by the Assessing Officer by issuing intimation and after considering the documents produced by the assessee, summons were issued to the partner of the firm, who had purchased the property, their Books of Accounts were perused and the Assessing Officer having been fully satisfied that the transfer has taken place in terms of Section 2(47) of the Act in the Assessment Year 2004-05, had passed the scrutiny Assessment Order under Section 143(3). Admittedly, the Assessing Officer did not have any new or tangible material to show that the assessee failed to fully and truly disclose all particulars and the assessment warrants reopening. In our considered view, the assessee has been put to sheer harassment on account of notice under Section 148 of the Act, dated 31.03.2017. Had the Assessing Officer perused the letter of the Assessing Officer dated 26.07.2005, wherein, the details were sought for with regard to the deposit of capital gains, the information furnished by the assessee through his Chartered Accountant on 08.08.2005, the certificate issued by the Indian Bank, North Usman Road Branch, Chennai, dated 07.08.2005, and the order of assessment under Section 143(3) dated 30.10.2008, the present reopening would not have been made and could not have been made. Therefore, we are convinced that the reopening is a clear case of change of opinion and therefore, not valid in law.

8.For all the above reasons, the Writ Appeal is allowed and the order passed in the Writ Petition is set aside and consequently, the Writ Petition is allowed and the proceedings which are impugned in the Writ Petition are quashed. 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, 15(1)
121, Nungambakkam High Road,
Chennai - 600 034.

W.A.No.1777 of 2021

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