IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.9.2021

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

WRIT APPEAL NO.2152 OF 2021 & CMP.NO.13573 OF 2021

R.K.Palaniswamy ...Appellant

Vs

1.The Principal Commissioner of
Income Tax, Income Tax Department,
No.67A, Race Course Road,
Coimbatore-18.

2.The Joint Commissioner of
Income Tax, Non-Corporate
Range-3, Income Tax Department,
No.67A, Race Course Road,
Coimbatore-18.

3.The Income Tax Officer,
Non Corporate Ward 3(1),
Income Tax Department,
No.67A, Race Course Road,
Coimbatore-18. ... Respondents

APPEAL under Clause 15 of the Letters Patent against the order dated 30.6.2021 made in W.P.No.32366 of 2017.

Prayer in W.P.No.32366 of 2017:-

calling for the records of the 3rd Respondent to quash the impugned order dated 09.01.2017 in PAN : AHSPP 7915Q/2016-17/new 3(1) and consequently quash the impugned Notice dated 01.07.2016 in PAN: AHSPP 7915Q issued in terms of Section 148 of the incomeTax Act 1961 on the Assumption of jurisdiction under Section 147 of the said Income Tax Act 1961 for framing re-assessment in relation to the Assessment Year 2011-12 and further direct the Third Respondent to drop the proceedings initiated under section 147 of the Act for the said assessment year 2011-12.

For Appellant : Mr.A.S.Sriraman
For Respondents: Mr.A.P.Srinivas, SSC

Judgment was delivered by T.S.SIVAGNANAM,J We have heard Mr.A.S.Sriraman, learned counsel appearing for the appellant and Mr.A.P.Srinivas, learned Senior Standing Counsel accepting notice for the respondents.

2. This appeal filed by the appellant - assessee is directed against the order dated 30.6.2021 in W.P.No.32366 of 2017.

3. The said writ petition was filed by the appellant to quash the notice issued by the third respondent under Section 148 of the Income Tax Act, 1961 (for brevity, the Act) for reopening the assessment pertaining to the year 2011-12 and consequently to drop the proceedings.

4. We may not be required to elaborately go into the factual matrix, as we are convinced that the grounds canvassed by the appellant - assessee challenging the reopening of assessment, which were controverted by the respondents in their counter affidavit, have not been dealt with and decided by the learned Single Judge. The discussion by the learned Single Judge is in paragraph 6 of the impugned order dated 30.6.2021. On a reading of the same, we find that the learned Single Judge noted as to what were the powers of the Assessing Officer under Section 147 of the Act.

5. There can be no dispute as to the powers conferred on the Assessing Officer under Section 147 of the Act. However, the question, which is required to be decided in the said writ petition, is as to whether the assumption of jurisdiction by the Assessing Officer invoking Section 147 of the Act is in accordance with law.

6. The case of the assessee was that the assumption of jurisdiction was bad in law, as the reopening was a clear case of change of opinion.

7. We find from the impugned order before us that this aspect has not been dealt with and no finding has been recorded by the learned Single Judge. Admittedly, as against the order dated 09.1.2017 disposing of the appellant's objections as being not tenable, the appellant - assessee has no other remedy under the provisions of the Act and therefore, writ petitions have been held to be maintainable questioning the orders of the Assessing Officers disposing of the objections filed to the reopening of assessment. Hence, the learned Single Judge is required to decide as to whether the reopening was valid, for which, it would be necessary that the factual matrix has to be

gone into, as it is the specific case of the appellant – assessee that all material facts were submitted to the Assessing Officer when the original assessment was completed under Section 143(3) of the Act and the assessment having been reopened beyond a period of four years, the Assessing Officer should have a fresh tangible material in his possession to reopen the assessment.

8. The case of the appellant – assessee, as mentioned in the objections dated 02.11.2016, is that the reopening of assessment is a clear case of change of opinion.

9. The Assessing Officer would state that a new information was unearthed during search proceedings, that the assessee received on money in respect of a transaction to the tune of Rs.30.19 lakhs and this, according to the Assessing Officer, is a new information warranting reopening.

10. The assessee, in the said writ petition, contended that this could never be a new information as the entire case was discussed by the Assessing Officer while completing the original assessment, all records were placed before him and specifically, it had been stated that the sale transaction did not fructify and though the assessee paid Rs.50 lakhs, what was returned to the assessee was only Rs.31,24,000/-, which was reflected in the bank statements as well as financials, which were filed along with the return of income.

11. Therefore, what is required to be seen in the said writ petition is as to whether the alleged ground, on which, the reopening was done, was based on a new material, was there a sale transaction and more particularly when the assessee was not the owner of the property. The so called material, which was unearthed during search proceedings conducted in the premises of the Finance Manager of a company, has also been furnished to the assessee and the notings therein need to be considered as to whether any on money was received by the assessee.

12. Unless these are decided and a finding is rendered, it cannot be held as to whether the reopening is valid or not. Since such an exercise has not been done by the learned Single Judge, we are inclined to interfere with the impugned order. This is more so unless and until such a finding is rendered, the Appellate Court cannot test the correctness of the findings. Therefore, in the absence of any such finding, the Appellate Court cannot be expected to convert itself into the Court of first instance and decide the writ petition on merits. Hence, while setting aside the impugned order passed in the said writ petition, we are inclined to restore the said writ petition to the file of the learned Single Judge to be heard and decided on

merits.

13. For all the above reasons, the writ appeal is allowed, the impugned order is set aside and W.P.No.32366 of 2017 is restored to the file of the learned Single Judge. Consequently, the order of interim stay granted in the said writ petition stands revived and shall continue till the disposal of the said writ petition. No costs. Consequently, the connected CMP is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To
1.The Principal Commissioner of Income Tax, Income Tax Department, No.67A, Race Course Road,
Coimbatore-18.

2.The Joint Commissioner of Income Tax, Non-Corporate Range-3, Income Tax Department, No.67A, Race Course Road,
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3.The Income Tax Officer, Non Corporate Ward 3(1), Income Tax Department, No.67A, Race Course Road,
Coimbatore-18.

+1cc to Mr.S.Sridhar, Advocate, S.R.No.44848
+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.44515

WA.No.2152 of 2021&
CMP.No.13573 of 2021

RSV(CO)
PM/22/09/2021