IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.09.2021

CORAM :

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

W.A.No.2269 of 2021
and
C.M.P.No.14434 of 2021

N.S.Srinivasan ... Appellant/ Petitioner

Vs.

The Asst. Commissioner of Income Tax,
Non-Corporate Circle, 14(1)
121, Mahatma Gandhi Road,
Chennai - 600 034. .. Respondent/ Respondent

Writ Appeal has been filed under Clause 15 of the Letters Patent to set aside the order dated 02.07.2021 passed in W.P.No.27810 of 2018.

Prayer in W.P.No.27810 of 2018:
Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records on the file of the respondent in PAN: ABBPS7903E and quash the impugned notice in ITBA/AST/S/148/2017-18/1009542662(1) dated 29.03.2018 issued under Section 148 of the Income Tax Act, 1961 and the consequential proceedings dated 07.09.2018.

For Appellant : Mr.Raghav Menon
for Mr.R.Sivaraman

For Respondent : Mr.Prabhumukunth Arunkumar
Standing Counsel

J U D G M E N T
(Judgment was delivered by T.S. SIVAGNANAM, J.)

This Writ Appeal by the assessee is directed against the order, dated 02.07.2021, in W.P.No.27810 of 2018, filed by the appellant/assessee.

2.The order impugned in the writ petition was the proceedings of the respondent, dated 29.03.2018, issued under Section 148 of the Income Tax Act, 1961 ("the Act" for brevity), reopening the assessment for the Assessment Year 2011-12.

3.The assessee is an individual, practicing Chartered Accountant and partner of a Chartered Accountant Firm placed in Chennai. The assessee had filed his return of income on 30.09.2011, declaring a total income of Rs.15,92,960/- and the same was processed under Section 143(1) of the Act. Subsequently, the case was selected for scrutiny and notice under Section 143(2) was issued on 02.08.2012, along with a questionnaire, dated 15.07.2013, calling for various details and affording an opportunity to the assessee to attend a personal hearing and explain the income declared during the relevant Assessment Year. The assessee would state that he had filed all the details as called for by the respondent/Assessing Officer from time to time, including the explanation pertaining to his professional fee receipts, purchase and sale of land, etc. After five sittings, in which the assessee was heard, the assessment was completed under Section 143(3) by order dated 20.01.2014.

4.After four years, notice, dated 29.03.2018, was issued under Section 148 of the Act. The assessee, by letter dated 26.04.2018, stating that the assessment cannot be reopened beyond four years from the end of the relevant Assessment Year, sought for the reasons for reopening, which were furnished to the assessee by proceedings of the Assessing Officer, dated 07.05.2018.

5.The Assessing Officer stated that, on going through the miscellaneous records for the Assessment Year 2011-12, the following three observations were found :

i. AIR 26AS-194 J omitted
ii.Excess Investment Unexplained
iii.Investment in pursuance of House Property

Thus, the Assessing Officer stated that he has reasons to believe that income chargeable to tax has escaped assessment within the meaning of Section 147 of the Act and that the assessee has failed to disclose fully and truly all material facts necessary for the assessment for the relevant Assessment Year.

6.The assessee objected to the reopening vide letter dated 12.05.2018, stating that the case was taken up for detailed scrutiny and after full fledged hearing, the Assessing Officer was satisfied with the explanation offered and the assessment was completed and the present reopening is a clear case of change of opinion. Various other factual details with regard to the sale of house property were also mentioned. The assessee placed reliance on the decision of the Hon'ble Supreme Court, stating that the action of the respondent amounts to reviewing the scrutiny assessment.

7.The Assessing Officer, by order dated 07.09.2018, rejected the objections raised by the assessee, inter alia stating that the scrutiny assessment was only a limited scrutiny on the question of taxability of sale of property and the issue on which the reopening has been done is regarding outgoing of funds in the form of investment in property and mutual fund and this issue was not discussed in the original assessment proceedings and no opinion was formed on this issue and hence, there is no change of opinion.

8.Aggrieved by the said order, the assessee filed the writ petition. When the writ petition was entertained, an order of interim stay was granted. The respondent had filed their counter affidavit, largely reiterating that the original assessment was a limited scrutiny and the issues on which the reopening has been made was never discussed at the time of scrutiny assessment and there is no change of opinion. The assessee filed a rejoinder, denying the various averments made in the counter affidavit filed by the Assessing Officer. The learned Single Bench, by the impugned order, dismissed the writ petition. Aggrieved by the same, the assessee is before us by way of this appeal.

9.We have elaborately heard Mr.Raghav Menon for Mr.R.Sivaraman, learned counsel for the appellant and Mr.Prabhumukunth Arunkumar, learned Standing Counsel appearing for the respondent.

10.On a careful reading of the order impugned in this appeal, we find that, in Para No.13 of the impugned order, the learned Single Bench has held that, a perusal of the Assessment Order as well as the objections raised by the assessee reveal that, undoubtedly, the assessee had furnished the details regarding the sale and purchase of the property through the capital gains and he has furnished details and documents pertaining to the sale and purchase of the property. Further, the Court held that the questionnaire issued by the Assessing Officer during the original assessment was complied with and the petitioner has furnished all details, which were considered by the Assessing Officer. After rendering such a finding, the Court poses a question to itself stating that it has to consider whether the reopening is sustainable with reference to the proviso to Section 147 of the Act. After setting out in brief about the purport and intent of Section 147 of the Act, in Para No.15 of the impugned order, the learned Single Bench proceeds to take note of the averments set out in the counter affidavit filed by the Assessing Officer, more particularly in Para Nos.16 to 20, however, we find that the rejoinder filed by the assessee to these averments made in the counter affidavit have not been taken note of. Thereafter, the Court proceeds to hold that, when there are certain discrepancies with reference to information provided and the Assessing Officer has reason to believe that certain information were not furnished truly and fully in respect of the information provided at the time of assessment, the authority is empowered to reopen the proceedings. The further observations made in Para No.16 of the impugned order are all observations pertaining to the scope of Section 147 and explanation contained thereunder, and nothing pertaining to the assessee's case.

11.Thus, we can safely conclude that the learned Single Bench had dismissed the writ petition largely due to the stand taken by the Assessing Officer in his counter affidavit in Para Nos.16 to 20. As pointed out earlier, the rejoinder, which was filed by the assessee to these averments, have not been adverted to or taken into consideration.

12.Be that as it may, we shall examine as to whether the reopening was valid. Undisputedly, the reopening of the assessment, having been done after four years, the first proviso under Seciton 147 of the Act would stand attracted, which would state that, where an assessment under Sub-Section 3 of Section 143 or Section 147 has been made for the relevant Assessment Year, no action shall be taken under Section 147 after the expiry of four years from the end of the relevant Assessment Year, unless any income chargeable to tax has escaped assessment for such Assessment Year by reason of the failure on the part of the assessee to make a return under Section 139 or in response to a notice issued under Sub-Section (1) of Section 142 or Section 148 or to disclose fully and truly all material facts necessary for the assessment for that Assessment Year. The first limb of the proviso deals with the assessment under Sub-Section 3 of Section 143 or any assessment under Section 147. This situation would arise only when the return of income has not been filed by the assessee, which admittedly is not the case with that of the assessee before us. Therefore, the proceedings initiated by the Assessing Officer is undoubtedly the reassessment proceedings, as the assessment has already been completed under Section 143 (3) of the Act. If such is the position, the Assessing Officer should be able to point out that, income chargeable to tax has escaped assessment by reasons of the failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment.

13.The reasons for reopening, as mentioned above, are under three heads. However, there is no allegation that income chargeable to tax has escaped assessment on account of the failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment. We say so, because, in the reasons for reopening dated 07.05.2018, the Assessing Officer would state that, on going through the assessee's miscellaneous records for the Assessment Year under consideration, the observations as pointed out in the reasons are found. Thus, it is clear that the Assessing Officer has not attributed any failure on the part of the assessee to fully and truly disclose all material particulars required to be disclosed for the assessment. If such is the case, the reopening of the assessment would be bad in law.

14.The Assessing Officer, while considering the objections to the reopening and rejecting the same, would state that the scrutiny assessment under Section 143(3) was a limited scrutiny and the issue which he has pointed out has never been the subject matter of the scrutiny assessment. The learned Standing Counsel, to support such contention, has referred to the official records, which is a data-sheet maintained by the Department, where the details of the case of the assessee and the reasons for scrutiny selection had been mentioned, and pointing out to Column No.8 of the details, it is submitted that the type of scrutiny was limited and therefore, the issues pointed out in the reasons, dated 07.05.2018, were not subject matter of the scrutiny assessment under Section 143(3) of the Act.

15.There is nothing on record to show that the scrutiny assessment was a limited scrutiny and duly intimated to the assessee accordingly. This is clear from the Annexure to the notice issued to the assessee, dated 15.07.2013, which is the notice under Section 142(1), which contains an Annexure, wherein, the following details were called for from the assessee :

> "1.A copy of the return of income if electronically filed and also copies of any other original/revised return of income submitted for the same AY 2011-12.
> 2.Detailed computation of total income & also detailed computation of income under different heads of income and evidences thereof.
> 3.Evidences of payments of taxes claimed in the return of income.
> 4.Details and evidence of claim of deduction under Chapter VI-A.
> 5.Details and evidence of incomes claimed exempt/incomes claimed as taxable at a rate below normal rate of tax.
> 6.Brief profile of the business or profession carried out by the assessee for A.Y.2011-12.
> 7.Details of all bank accounts (viz. Name, a/c No., type of a/c, branch & bank name etc), deposits and bank statement for A.Y.2011-12.
> 8.Details of sale and purchases of all movable and immovable properties during the A.Y.2011-12."

16.The assessee had submitted his reply and furnished a copy of the e-filed Income Tax Return, detailed statement of computation of total income reflecting the income disclosed under different heads and enclosing such details, print out of Form 26AS, documents to support the deduction claim by the assessee under Section 80-C and 80-G, details regarding the dividend income and a very detailed explanation with regard to the immovable property transaction, which is the core issue in the reopening. The assessee had enclosed as many as ten documents, including the copies of the sale deeds, etc. The assessee also enclosed the statement from Mutual Funds and the contract notes from the broker in support of the same, details of Bank accounts, separate statement showing sources and applications of funds for the purchase and construction of new house property and also the details as to his profession that he was a partner of a Chartered Accountant firm placed at Chennai and he is not involved in any other activities. He enclosed the audited income and expenditure account, Balance Sheet, partners capital accounts and current accounts, computation of total income and ITR-V of the said firm and stated that these details will explain the remuneration drawn by him from the firm during the year and his share of profit from the firm and the transactions through his capital account and current account. With regard to the 26AS statement, fee receipts from Brakes India Ltd. and Turbo Energy Ltd. and the TDS recoveries were shown to have been reflected in the statement and detailed explanation had been given. Thereafter, the assessee has explained about the sale proceeds received from the sale of a car and other details concerning the purchase of a new car, which has been duly accounted by the partnership firm. The assessee also enclosed the copies of the housing loan statement of account of SBI, as well as India Bulls Housing Finance Ltd., in support of his claim for deduction for housing loan interest against the income from property. The assessee had disclosed the particulars relating to the loan and the property which it pertains to. The assessee, therefore, earnestly hoped that the details and documents enclosed will meet the requirements and queries raised by the Assessing Officer and requested him to complete the assessment at the earliest convenience.

17.The learned counsel for the appellant has drawn the attention of this Court to all the details and statements, which were pointed out in the explanation dated 30.08.2013, submitted by the assessee.

18.It appears that, once again, the assessee was called to attend the hearing and he furnished the written submissions on 07.01.2014, furnishing particulars of computation of Long Term Capital Gains on the sale of the house property at Kodambakkam and also the particulars regarding the Guideline Value for the purpose of Stamp Duty, Market Value, etc. Thereafter, there has been a further hearing, which was attended by the assessee on 08.01.2014, following which, he had submitted another representation on 09.01.2014, enclosing the complete set of copy of the Income Tax Return Acknowledgment and statement of total income for the

Assessment Year 1991-92, which was published as evidence of the amount of cost of construction incurred by him for construction of the house during the year ended 31.03.1991, the statement of computation of income, the complete details with regard to the cost of construction of Rs.3,85,000/- incurred by the assessee, the sources of funds for the same, separately for each of the Floors, namely, Ground Floor and First Floor and additional expenditure which has been incurred by him, etc. After all these proceedings, the assessment was completed vide order dated 20.01.2014.

19.The reasons we have set out above are to support our conclusion that the scrutiny assessment was not a limited scrutiny. Apart from the fact that there is nothing on record to show that the assessee was intimated that the scrutiny was a limited scrutiny, in fact, we find that, on more than five occasions, the case has been discussed by the Assessing Officer with the assessee and on each occasion, the assessee has cooperated and furnished details. There is no allegation that the details were either inadequate or not fully or truly furnished or the facts or figures were distorted. Thus, the Assessing Officer, having been satisfied, has completed the assessment under Section 143(3) of the Act.

20.The Revenue would point out that the Assessment Order is a brief order, which does not elaborately set out the discussion. Undoubtedly, the Assessing Officer is not a Court or judicially trained officer to write a judgment. The details called for by him, pursuant to the notice under Section 142(1), and the response of the assessee to all the queries, have to be taken note of and those details also should be read along with the Assessment Order, dated 20.01.2014, and if it is done so, then it cannot be said that the assessment under Section 143(3) was without due application of mind.

21.In the reasons for reopening, dated 07.05.2018, all the materials which were subject matter of scrutiny assessment have been verbatim taken up on the alleged ground of reopening. That apart, these materials were culled out from the records, relating to the assessee, which are stated to be miscellaneous records. In any event, they are part of the assessment records and in the absence of any contention that the income chargeable to tax has escaped assessment on account of the reason of failure on the part of the assessee to disclose fully and truly all material facts, if a reopening is done, it would clearly amount to a case of change of opinion and a review of the earlier Assessment Order, which is impermissible in law.

22.The argument of the learned Senior Standing Counsel is to read Section 149(1)(b) along with the first proviso to Section 147. These provisions are referred to support the argument that the Assessing Officer is entitled to make the assessment in the instant case and the question of failure to disclose fully and truly all facts is not subject matter of the present case. We do not agree with the said submission, since the proviso under Section 147 deals with the assessment under Section 143(3) or the assessment under Section 147, which can occur only when the return of income was not filed by the assessee, which is not the case of the assessee in the instant case. Therefore, we are not convinced with the stand of the Revenue in this regard.

23.As pointed out earlier, the learned Single Bench had dismissed the writ petition largely referring to the averments contained in the counter affidavit filed by the Assessing Officer in Para Nos.16 to 20. Some of those paragraphs particularly deal with the statements of law, however, with regard to the averments in Para No.17 of the counter affidavit, the assessee had specifically stated that the averment that the case was selected for limited scrutiny, is factually wrong, as it is evidenced by the entire assessment records already available with the Assessing Officer, which were referred to by the assessee in the objection letter, dated 12.05.2018, and a copy of the first reply letter, dated 30.08.2013, filed before the Assessing Officer during the original assessment proceedings, was also enclosed as Annexure to the objection letter dated 12.05.2018. Further, the assessee had rebutted the averments in Para No.18 of the counter affidavit, by giving full details regarding the professional receipts and that the credit of TDS on those credits was claimed in the hands of assessee, was absolutely false. The details in this regard have also been furnished in the rejoinder affidavit in Para No.18. Likewise, the averments in Para Nos.19 and 20 of the counter affidavit have also been denied and it was pointed out that the assessee had submitted copies of the Bank statements, as well as documents evidencing the sale and purchase of the property, and all the transactions were duly routed through the Bank and the statement of accounts were furnished and examined by the Assessing Officer and it cannot be stated that those aspects were neither called for nor examined. These averments were never tested by the learned Writ Court for its correctness, but the learned Writ Court solely relied on the averments in the counter affidavit, which have been controverted and denied by the assessee, by giving full particulars.

24.Thus, we are of the view that the reopening of assessment was a clear case of change of opinion and what the Assessing Officer attempted was to review the scrutiny assessment, which is impermissible in law.

25.For all the above reasons, the Writ Appeal is allowed and the order passed in the writ petition is set aside.

Consequently, the writ petition is allowed and the order impugned in the writ petition, dated 29.03.2018, and the entire reassessment proceedings are quashed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mkn

To

The Assistant Commissioner of Income Tax,
Non-Corporate Circle, 14(1)
121, Mahatma Gandhi Road,
Chennai - 600 034.

+1 cc to M/s.Hema Murali Krishnan, Advocate Sr.NO. 45739

W.A.No.2269 of 2021

RR(CO)
A.SK(26.10.2021)