IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.04.2021

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THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

W.P.Nos.44238 & 44351 to 44353 of 2016
and W.M.P.Nos. 38082, 38083 & 38228 to 38233, of 2016

S.Usharani .. Petitioner in all W.Ps.

-vs-

The Assistant Commissioner of Income Tax,
Circle-I, No.2, 2nd Floor,
Central Revenue Building,Barracks Cross Street,
Officer's Line, Vellore-632 001. .. Respondent in all W.Ps.

Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records of the respondent contained in its proceedings under Section 152(2) of the Income Tax Act, 1961 dated 15.12.2016 in PAN: AAAPU2051R, dismissing the petitioner's objections to the reopening of income tax assessment for the assessment years 2009-10, 2010-11, 2011-12 and 2012-13 and to quash the same as arbitrary, unjust and illegal and to consequently forbear the respondent from re-assessing the petitioner's income for the assessment years 2009-10, 2010-11, 2011-12 and 2012-13 pursuant to the notice issued under Section 148 of the Income Tax Act, 1961, dated 30.03.2016 respectively.

For Petitioner : Mr.Suhrith Parthasarathy
(In all W.Ps.)

For Respondent : Ms.Hema Muralikrishnan,
(In all W.Ps.) Senior Standing Counsel

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COMMON ORDER

The writs on hand are filed questioning the validity of the reopening of assessment for the assessment years 2009-10 to 2012-13. In all the writ petitions, the respondents have initiated action by issuing notice under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as "the IT Act") for reopening of the assessment.

2.It is contended by the learned counsel for the writ petitioner that the reasons for reopening are common and based on the same facts, which all are untenable. The learned counsel for the petitioner solicited the attention of this Court with reference to the reason supplied by the respondent for reopening of the assessment which reveals that during the course of assessment for the assessment year 2013-14, it is noticed that the assessee is incurring heavy interest on the unsecured loans obtained from her family members. The assessee is a member of A.Dharmalingam (BHUF) and proprietress of A.Dharmalingam & Bros running a textile shop at Arni. The interest is being paid at the rate of 18% on the loans taken from the family members. Most of the loan creditors are paid salary and bonus by the assessee, which is found to be routed as loans to the assessee. The drawings shown by those creditors are very low or nil. It is claimed by the creditor that their low drawings is an account of being a part of large HUF and the funds are explained in the hands of the assessee. The said loans have grown from 3,09,95,711.00 to 6,96,46,401 from A.Y. 2009-10 to 2013-14. As found out from the assessee instead of repayment of the loans, gifts are made to the creditors. Accordingly, the interest claimed by the assessee has failed to pass the test of business exigency and prudency. It is found that the deduction claimed out of the profits are to be disallowed, since, these interest payments does not satisfy the provisions of Section 37(1) of the Income-tax Act, 1961.

3.With reference to the reasons recorded for reopening of the assessment, the learned counsel contended that in the order passed by the Commissioner of Income Tax (Appeals)-13, Chennai (for brevity "the Commissioner") dated 15.12.2017, an elaborate consideration was made and the Commissioner passed an order in favour of the writ petitioner. The Commissioner categorically made a finding that the disallowance of interest made by the Assessing Officer is not sustainable and accordingly, directed the Assessing Officer to delete the addition made for Rs.92,32,301/-. Accordingly, the appeal filed by the assessee was allowed.

4.Relying on the said order passed by the Commissioner in proceedings dated 15.12.2017, the petitioner contended that the reasons for reopening of the assessment are untenable and to be set aside. The reasons stated in the impugned orders are adjudicated by the Commissioner and once the appeal was allowed by the Commissioner, then all the orders in respect of the previous assessment orders became unsustainable and to be held as void.

5.The learned Senior Standing Counsel appearing on behalf of the respondent disputed the said contention by stating that the appeal before the Commissioner was filed with reference to the year 2013-14, however, the reopening of the assessment in these writ petitions are for the assessment years 2009-10 to 2012-13 and therefore, the issues are to be adjudicated by the competent authority independently. Allowing of one appeal would not provide exoneration from the liability. Thus, the writ petitions are to be dismissed.

6.This Court is of the considered opinion that the reopening of assessment is made based on the assessment done during the assessment year 2013-14. It was noticed that the assessee is incurring heavy interest on the unsecured loans obtained from her family members. The discrepancy was found by the authorities while scrutinizing the returns for the assessment year 2013-14. Thus, they have instituted an action under Section 147 of the IT Act for reopening of assessment and consequently, issued notice under Section 148 of the IT Act.

7.Section 147 of the IT Act unambiguously stipulates that if the Assessing Officer "has reason to believe" that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of Sections 148 to 153 of the IT Act, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under Section 147 or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned. Thus, the phrase " has reason to believe" is wider enough to cover the discrepancies, if any, identified during the scrutiny of returns. If the Assessing Officer has reason to believe based on certain material facts, then he is competent to invoke Section 147 of the IT Act for reopening of assessment. The wider scope of the terms "has reason to believe" has been interpreted by various Courts across the country and accordingly, the power undoubtedly is wider enough to institute action in the event of subjective satisfaction of the Assessing Officer based on some materials on record.

8.The reason furnished for reopening of assessment in proceedings dated 22.11.2016 reveals that the Assessing officer while scrutinizing the returns of the year 2013-14, noticed that the assessee is incurring heavy interest on the unsecured loans obtained from her family members. However, the petitioner states that subsequently, with reference to the said issue, an appeal was filed and the Commissioner allowed the appeal on 15.12.2017 with a finding that disallowance of the interest made by the Assessing Officer is not sustainable.

9.This Court is of the considered opinion that these facts and issues cannot be adjudicated by the High Court under Article 226 of the Constitution of India. All such disputed facts and circumstances are to be adjudicated with reference to the documents and evidences available on record and by affording opportunity to the assessee. Such an exercise cannot be done by the High Court. Undoubtedly, the appellate order dated 15.12.2017 has been passed in favour of the assessee. However, the assessee has to defend her case by producing all such documents and allow the competent authority to conclude the process by following the procedures contemplated. Interference by the High Court in the process of such scrutiny will cause prejudice to either of the parties. Thus, the High Courts are expected to be cautious while interfering in such circumstances, as the statute contemplates completion of proceedings by following the procedures.

10.This being the factum established, the relief as such sought for cannot be granted. However, the petitioner is at liberty to submit all the documents including the order passed by the Commissioner for the assessment year 2013-14 dated 15.12.2017. The respondent is directed to provide an opportunity to the writ petitioner to defend her case and consider all the grounds raised by the assessee on merits and pass appropriate orders in accordance with law and complete the assessment as expeditiously as possible.

11.Accordingly, the writ petitions stand disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

abr

To

The Assistant Commissioner of Income Tax,
Circle-I, No.2, 2nd Floor,
Central Revenue Building,
Barracks Cross Street,
Officer's Line, Vellore-632 001.

+1cc to Mrs.Hema Muralikrishnan, Advocate, S.R.No.24404
+4cc to Mr.Arun Karthik Mohan, Advocate, S.R.No.24365, 24368,
S.R.No.24364, 24366

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RLD(CO)
CB(06/07/2021)