IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.32366 of 2017
and W.M.P.No.35658 of 2017

R.K.Palaniswamy ...Petitioner

Vs

1.The Principal Commissioner of Income Tax – 1,
Income Tax Department,
67A, Race Course Road,
Coimbatore 641 018.

2.The Joint Commissioner of Income Tax,
Non Corporate Range – 3,
Income Tax Department,
67A, Race Course Road,
Coimbatore 641 018.

3.The Income Tax Officer,
Non Corporate Ward – 3(1),
Income Tax Department,
67A, Race Course Road,
Coimbatore 641 018. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the 3rd respondent to quash the impugned order dated 09.01.2017 in PAN: AHSPP7915Q/2016-17/NCW. 3(1) and consequently quash the impugned Notice dated 01.07.2016 in PAN: AHSPP7915Q issued in terms of Section 148 of the Income Tax 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 147 of the Act for the said Assessment Year 2011-12.

For Petitioner : Mr. S.Sridhar

For Respondents : Mr. A.P.Srinivas
(Senior Standing Counsel for IT)
and Mr.A.N.R.Jaya Prathap

ORDER

The Writ on hand is filed challenging the Notice issued under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as, 'the Act') for reopening of assessment as well as the order dated 09.01.2017, disposing of the objections filed by the writ petitioner.

2.The petitioner is an Assessee and filed his Return of Income for the Assessment year 2011-12 on 05.05.2012. The scrutiny proceedings were undertaken on issuance of notice under Section 143(2) of the Act, dated 12.08.2013. The scrutiny assessment was completed by the 3rd respondent and an order of assessment was passed on 10.03.2014 for the Assessment Year 2011-12.

3.Surprisingly, the petitioner received the impugned notice on 01.07.2016, under Section 148 of the Act, for reopening of assessment. The petitioner filed a letter indicating adoption of the original Return of the Income as the Return of Income in response to the notice issued under Section 148 of the Act, on 18.07.2016. Through another letter dated 20.07.2016, the petitioner requested for furnishing of reasons recorded for assuming jurisdiction under Section 147 of the Act. The said letter was responded by the respondents and reasons were furnished. Thereafter, the petitioner filed his objections for reopening of assessment on 02.11.2016 and the said objections were not considered in a proper manner and the impugned order of rejection was passed by the 3rd respondent on 09.01.2017.

4.The grievances of the writ petitioner is that all the materials, informations, books of accounts, etc., were submitted before the Assessing Officer during the original assessment and the said materials and informations were considered elaborately and the original order of assessment was issued. With reference to the reasons furnished for reopening of the assessment by the Assessing Officer, the petitioner, in his objections, has elaborated the nature of transactions, more specifically, the petitioner contended that when Indusind Bank statements were submitted, it showed the deposit of Rs.31,24,000/- on 18.11.2010. The AO asked to produce the evidence for the same and the petitioner had produced the receipt of payment to the AO. The amount of Rs.50,00,000/- was given through bank channels only for a project in the Financial Year 2009-10 and it was informed by the party, Mr.D.Srinivasan, that the project was not able to obtain statutory approvals and thus, the petitioner insisted for payment and Mr.T.Srinivasa, who in turn returned the money through cheque drawn on M/s.Dhanalakshmi Bank, Coimbatore, vide Cheque No.917391/17.11.2010 and deposited in

Indusind Bank, Coimbatore account and the Bank statement was already submitted at the time of hearing. The petitioner has elaborated the transactions. The petitioner is of an opinion that all these factors were placed before the Assessing Officer at the first instance during the original assessment and the same was considered and final assessment order was passed. Thus, the very initiation of reopening proceedings is not in consonance with the conditions stipulated under Section 147 of the Act.

5.Perusal of the order disposing of the objections by the 3rd respondent in proceeding dated 09.01.2017 reveals that the objections were considered. The findings in this regard made by the Assessing Officer is that it may be true that certain facts have been put across to the then Assessing Officer while completing the scrutiny proceedings. However, the new information unearthed during the search proceedings in the aforesaid cases has brought forth the fact that you have received on money on this transactions of Rs.30.19 Lakhs. Based on this new information and after due consideration of the information, the case has been reopened.

6.This Court is of the considered opinion that when there is a new information of material on the record, the Assessing Officer is empowered to initiate reopening proceedings under Section 147 of the Act. Various circumstances are contemplated under Section 147 of the Act and based on any one of such circumstances, the Assessing Officer has reason to believe, then he is empowered to reopen the assessment. Even under-assessment is a ground for reopen. Thus, this Court is of the considered opinion that the reopening of assessment in the present case is done based on new information unearthed and such an information is to be clarified by the assessee, by participating in the adjudicating process and this Court cannot go into the details regarding transactions or the intricacies involved in such transactions. All such disputes on facts are to be adjudicated with reference to the original documents and evidences made available between the parties and the scope of the jurisdiction cannot be extended to conduct a roving enquiry in these aspects.

7.The power of judicial review under Article 226 of the Constitution of India is to scrutinise the processes through which the decision is arrived by the competent authority by following the procedures as contemplated under the law, but not the decision itself. Thus, the petitioner-assessee has to participate in the adjudication. It is needless to state that the respondents are bound to provide opportunities to defend the case by the petitioner. By affording the opportunities, as contemplated, the proceedings are to be concluded. In this view of the matter, the case on hand is not a fit one for the purpose of quashing of the proceeding. Further, the respondents are directed to proceed with reopening of the assessment by affording opportunity to the petitioner to defend his case in the manner known to law.

8.With these observations, the Writ Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

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+1cc to Mr.A.P.Srinivas, Senior Standing Counsel, Sr.No.30315

W.P.No.32366 of 2017

GPL(CO)
RVM(23/07/2021)