IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2021

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THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

W.P.No.32371 of 2017
and W.M.P.Nos.35661 to 35663 of 2017

Kovalam Santhana Krishnan Mohan,
Flat No.4/B, Block No.24 & 25,
P.T.Rajan Salai, K.K.Nagar,
Chennai-600 078. ... Petitioner

-vs-

Income Tax Officer,
Ward-I, Income Tax Office,
Ootacamund. ... Respondent

Petition 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 comprised in its notice issued under Section 148 of the Income Tax Act, 1961 for PAN: AMNPM3778N, dated 30.03.2017 and all proceedings in furtherance thereof, including but not limited to the order dated 04.12.2017, disposing of the petitioner's objections to the reopening of the income tax assessment for the assessment year 2010-11, passed by the respondent and to quash the same as arbitrary, unjust and illegal and to consequently forbear the respondent from in any manner reassessing the petitioner's income under Section 147 of the Income Tax Act, 1961 for the assessment year 2010-11.

For Petitioner : Mr.Suhrith Parthasarathy

For Respondent : Mr.A.P.Srinivas, Sr. Standing Counsel

ORDER

The order dated 04.12.2017, disposing of the petitioner's objections to the reopening of the income tax assessment for the assessment year 2010-11, passed by the respondent is under challenge in the present writ petition.

2.The provision to be considered in the writ on hand is the first proviso to Section 147 and Explanation 2(a) to Section 147 of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

3.The first proviso to Section 147 contemplates 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 all material facts necessary for assessment for that assessment year.

4.Admittedly, in the present case, no return of income is filed by the petitioner/assessee for the assessment year 2010-11. Thus, contemplation of four years would not arise in the present case. Thus, reopening of the assessment under Section 147 of the Act is permissible beyond four years also.

5.Explanation 2(a) to Section 147 enumerates that "where no return of income has been furnished by the assessee although his total income or the total income of any other person in respect of which he is assessable under the Act during the previous year exceeded the maximum amount which is not chargeable to Income Tax Act". Therefore, reopening of assessment is permissible where no return of income is furnished by the assessee in such circumstances as stipulated in Explanation 2(a) to Section 147.

6.In respect of the above requirement with reference to the facts, the present writ petition is to be considered.

7.The learned counsel for the writ petitioner mainly contended that the reason furnished in the order impugned is nothing but change of opinion and cannot be construed as reason to believe. In order to substantiate the said contention, the learned counsel for the petitioner solicited the attention of this Court with reference to the proceedings dated 08.08.2017, wherein reasons are furnished. As per the said proceedings, nine immovable properties were sold by the writ petitioner/assessee on the file of the Sub Registrar, Nagapattinam. The details of the transaction are enumerated in the proceedings dated 08.08.2017.

8.With reference to the above reasons, the writ petitioner/assessee submitted a detailed objection vide letter dated 18.08.2017 wherein, it is contended that no transaction as alleged has taken place on 30.04.2009, but the petitioner has executed sale deed for a similar amount on 22.12.2008 and handed over possession of the property on the same day and consequently, treated the above sale as part of his income for the assessment year 2009-10. Similarly in all the other cases, the transactions have been accounted for in his return of income for the assessment year 2009-10 and included as part of total revenue and his income for the assessment year 2009-10.

9.It is further contended by the petitioner that a sum of Rs.1,92,000/- was received as commission during the year ended 31.03.2010 and after deduction of expenditure incurred in earning that income, the net income was below the taxable limits for the assessment year 2010-11 and consequently, no tax was payable thereon. Relying on the period of transaction as well as the handing over of possession by the petitioner to the purchaser, it is contended that the non-filing of return during the assessment year 2010-11 would not have any implication with reference to the reopening of assessment and the authority competent invoked Section 147 of the Act without jurisdiction and based on erroneous facts.

10.The learned counsel for the petitioner further contended that the writ petitioner earlier filed W.P.No.29614 of 2017 and this Court by order dated 20.11.2017, allowed the writ petition, set aside the impugned order and remanded the matter back for reconsideration. Once again, the Assessing Officer has failed to consider these aspects and passed the impugned order in cyclostyled manner by photocopying the reply sent by the petitioner. Thus, the present impugned order is also infirm and liable to be set aside.

11.At the outset, it is contended by the learned counsel for the petitioner that there are no new materials available for reopening of the assessment, non-filing of return of income for the assessment year 2010-11 has no implication with reference to the sale of immovable property took place prior to the assessment year and the total income was already assessed and the petitioner paid taxes for the said income. Thus, there is no reason to believe for reopening of the assessment and it is only change of opinion. Thus, the order impugned are liable to be set aside.

12.The learned Senior Standing Counsel appearing on behalf of the respondent disputed the said contention by stating that certain transactions, which are all doubtful in nature were raised as new materials for the purpose of reopening the assessment. Admittedly, the writ petitioner/assessee had not filed return of income for the assessment year 2010-11. Thus, the provisions of Explanation 2(a) to Section 147 would be applicable in the present case and in such circumstances, reopening of assessment is permissible. Thus, even in the absence of filing of return in a particular assessment year and subsequently the Assessing Officer should able to identify new materials or informations relating to the previous assessment year, wherein assessment order has been passed, then it is open to the Assessing Officer to reopen the assessment and adjudicate the issues on merits.

13.To substantiate the said contention, the learned Senior Standing Counsel relied on the findings of the Assessing Officer in proceedings dated 04.12.2017. In the said proceedings while furnishing reasons, the Assessing Officer made the following observations which all are relevant:-

> "On discussion, it was observed that the assessee filed a return of income on 01/08/2017 for the AY 2010-11 in response to the Notice u/s148 dated 30/03/2017 admitting income from profession of Rs.1,92,800/- received from M/s.Nagapattinam Energy (P) Ltd., as professional fees and claimed TDS of Rs.19,280/- as deducted by M/s.Nagapattinam Energy (P) Ltd., on this payment. Since the assessee did not file his return of income for the A.Y.2010-11 within the time as prescribed u/s 139 of the Income Tax Act 1961 and the income admitted by the assessee in his return of income filed for the A.Y.2010-11 in response to the Notice u/s 148 dated 30/03/2017 was Rs.1,92,800/- it is very obvious that the reasons recorded for issuing Notice u/s 148 is correct and good in law.
>
> Without prejudice to the above, the authorised representative of the assessee did not produce any evidence to substantiate his contentions as mentioned in the letters dated 18/08/2017 and 27/09/2017 that the possession for the two immovable properties were handed over in February 2009 to the purchaser and income arisen from the sale of these two immovable properties vide Document No.780/2009 and 781/2009 for Rs.14,31,250/- & Rs.46,72,800/- respectively was already admitted in the financial year 2008-09 relating to the assessment year 2009-10.
>
> On careful perusal of these two documents 780/2009 and 781/2009 registered with the SRO, Thirupundi, it is observed from the page no.8 of Document No.780/2009 and from the page no.15 & 16 of Document No.781/2009 that the purchaser shall henceforth hold and enjoy the right, title

and interest of the vendor in future.......

Thus, it is very clear from the copies of the sale deeds without any evidence contrary to this that the possession of this property was not handed over to the purchaser in February 2009 as claimed by the assessee in his letter dated 18/08/2017 and 27/09/2017."

14.The above reasons given by the Assessing Officer would throw light with reference to the material identified. The Assessing Officer admitted the fact that the return of income was filed by the assessee on 01.08.2017 for the assessment year 2010-11 in response to the notice under Section 148 dated 30.03.2017 admitting income from profession of Rs.1,92,800/- received from M/s.Ngapattinam Energy (P) Ltd., as professional fees and claimed TDS of Rs.19,280/- as deducted by M/s.Nagapattinam Energy (P) Ltd., on this payment. Since the assessee did not file return of income for the assessment year 2010-11 within the time as prescribed under Section 139 of the Act, it is obvious that the reason recorded for issuing the notice under Section 148 is correct. It is to be construed that though the documents were registered which all are not falling within the assessment year 2010-11, the transactions and certain inferences drawn by the Assessing Officer are to be adjudicated with reference to the documents and other informations for the purpose of reaching finality.

15.This Court is of the considered opinion that certain intricacies in the matter of considering the income details with reference to the informations cannot be adjudicated in a writ proceedings. All such disputed facts and informations are to be adjudicated by the Assessing Officer by affording opportunity to the assessee concerned. Undoubtedly, the transactions are being done on many occasions in a calculated manner. However, those facts and circumstances are required to be adjudicated by the Assessing Officer and this Court cannot go into such facts and informations in a writ proceedings.

16.It is to be borne in mind that assessment orders are initially passed under Section 143(3) only based on the informations and particulars furnished by the assessee at his own instance. Thus, the Assessing Officer in the eventuality of identifying any new material is empowered to reopen the assessment, if there is any reason to believe. Undoubtedly, the concept of reason to believe has been decided in many cases by the constitutional courts. However, the power under Section 147 is wider and therefore, even a slightest doubt which forms a new information is to be adjudicated on merits and High Court need not enter into the venture of adjudicating those factual informations which all are identified by the Assessing Officer during the scrutiny or otherwise. Thus, the High Court in a writ proceedings is expected to be cautious and an amount of restraint is required in the case of reopening of assessment. In the event of adjudicating the merits, there is a possibility of error as the intricacies in certain transactions and in a calculated manner through which such transactions are executed, deserve detailed adjudication with reference to the documents, which cannot be done by the High Court in a writ proceedings under Article 226 of the Constitution of India.

17.All these factors cannot be brushed aside as Section 147 provides various circumstances under which reopening of assessment can be done. As pointed out by the learned Senior Standing Counsel in the present case, the first proviso to Section 147 deals with cases where no return of income is filed. Explanation 2 enumerates various circumstances under which reopening of assessment is permissible. When the scope of reopening is wider enough to cover certain information which all are not adjudicated during the original assessment, then the High Court is expected to allow the Assessing Officer to adjudicate all those informations and factual disputes between the parties. In these circumstances, the petitioner would get liberty to place all the material facts and adjudicate the same on merits before the Assessing Officer. Therefore, this Court is not inclined to interfere in respect of the reasons furnished as the same constitute certain new informations in view of the fact that the petitioner/assessee had not filed any return of income for the assessment year 2010-11. Thus, the petitioner is at liberty to place all these materials as well as the grounds raised in this writ petition before the Assessing Officer enabling him to consider and take appropriate decision by following the procedures contemplated.

18.Accordingly, this writ petition is devoid of merits and stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

abr
To

The Income Tax Officer,
Ward-I,
Income Tax Office,
Ootacamund.

+1cc to Mr.A.P.Srinivas, Advocate Sr.25398
+1cc to Mr.Arun Karthik Mohan, Advocate Sr.25278

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srg 08/07/2021