IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.07.2021

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.27810 of 2018
and
W.M.P.No.32321 of 2018

N.S.Srinivasan .. Petitioner

-vs-

Assistant Commissioner of Income Tax,
Non-Corporate Circle 14(1), Chennai,
No.121, Mahatma Gandhi Road,
Nungambakkam, Chennai-600 034. .. Respondent

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 Petitioner : Mr.R.Sivaraman

For Respondent : Mr.D.Prabhu Mukunth Arunkumar, Standing Counsel

ORDER

The writ on hand is filed challenging the notice dated 29.03.2018 issued by the respondent under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2.The petitioner/assessee is an individual and a practising Chartered Accountant rendering his professional services as Partner of the firm, M/s.Venkat & Vasan, based out of Chennai. The assessee was assessed to income tax on the file of the respondent. The assessee filed his original return of income on 30.09.2011, for the assessment year 2011-12. The return of income was processed under Section 143(1) of the Act. The case was selected for scrutiny under Computer Aided Scrutiny Selection (CASS) and accordingly, notice under Section 143(2) was issued on 02.08.2012. The respondent issued notices under Section 142(1) along with questionnaire and 143(2) read with

Section 129 of the Act on 15.07.2013, calling for various details and granting opportunity to attend and explain the income declared during the assessment year 2011-12.

3.The assessee states that he filed all the details called for by the Assessing Officer from time to time. Complete set of details and relevant particulars were furnished to the Assessing Officer along with explanations pertaining to the professional fee receipts, purchase and sale of land etc. The Assessing Officer, on satisfaction, passed the final assessment order under Section 143(3) of the Act on 20.01.2014. Shockingly after a lapse of four years, the respondent issued the impugned notice under Section 148 of the Act on 29.03.2018. The assessee requested for reasons for reopening of assessment on 26.04.2018. The reasons for reopening of assessment were furnished by the respondent in proceedings dated 07.05.2018. In response, the assessee submitted his detailed objections to the reasons for reopening of assessment, vide letter dated 12.05.2018, and the said objections were considered and an order dated 07.09.2018, was passed disposing of the objections by the respondent.

4.The learned counsel for the petitioner strenuously contended that the entire exercise of reopening of assessment is beyond the jurisdiction and in violation of the Proviso clause to Section 147 of the Act. The learned counsel, relying on the Proviso clause to Section 147 of the Act, contended that for reopening the assessment beyond the period of four years, the mandatory requirements contemplated are to be complied with. In the present case, the petitioner has fully and truly furnished all the materials, informations etc., at the time of original assessment. Thus, the reasons furnished for reopening of assessment are absurd and not in consonance with the Proviso clause to Section 147 of the Act.

5.The learned counsel for the petitioner elaborately referred to the informations and details furnished by the petitioner before the Assessing Officer at the time of scrutiny of the return of income. The notice under Section 142(1) of the Act was issued on 15.07.2013 along with the questionnaire. The petitioner submitted his reply on 30.08.2013 wherein, he has clearly stated that he sold his earlier residential house property at New No.44, Old No.27, Parangusapuram Street, Kodambakkam, Chennai-600 024 and reinvested the capital gain in another house property at No.46, Balakrishna Naicken Street Extn., West Mambalam, Chennai-600 033. Thus, the assessee claimed exemption under Section 54 of the Act and he enclosed the copies of the documents. During the year ended 31.03.2011, the assessee has redeemed and sold mutual funds as well as shares. The assessee enclosed statements from the mutual funds as well as contract note from the broker in support of the same.

Regarding the professional income, as Chartered Accountant, the assessee has stated that he was a partner of M/s.Venkat & Vasan Chartered Accountants, Chennai and he enclosed copy of 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, which will explain the details of the remuneration drawn by the assessee from the firm during the year, his share of profit from the firm and the transactions through his capital account and current account.

6.The petitioner has further explained that in his 26AS statement, fees receipts from Brakes India Ltd., and Turbo Energy Ltd., as well as TDS recoveries therefrom are reflected. Right from the inception, these companies have been retaining the assessee in his personal name and paying professional fees in his personal name every month. Since all his professional practice is only through the firm M/s.Venkat & Vasan, these professional fees are also included in the professional fees receipts of the firm M/s.Venkat & Vasan Chartered Accountants and they are only claiming credit for the corresponding TDS recovery. Further, the assessee enclosed copies of the housing loan statement of account of State Bank of India as well as India Bulls Housing Finance Ltd., in support of the claim for deduction for housing loan interest against income from property.

7.The learned counsel for the petitioner, furnishing all these details, made a submission that the documents, informations and details were looked into by the Assessing Officer and the final order of assessment was passed. Thus, the initiation of reopening proceedings beyond the period of four years is untenable. Even after issuance of notice under Section 148, the petitioner provided all the documents and informations to the Assessing Officer for dropping of the proceedings. However, the respondent, without considering any of these documents and informations as well as the assessment order passed originally, continued the proceedings based on change of opinion and therefore, the impugned order is liable to be set aside.

8.The learned counsel for the petitioner relied on the particulars given by the petitioner, which were also endorsed by the respondent in the order dated 07.05.2018, reasons for reopening of assessment under Section 148 of the Act.

9.The learned Standing Counsel appearing for the respondent opposed the contentions raised on behalf of the petitioner by stating that the Assessing Officer has reason to believe to reopen the assessment beyond the period of four years and within six years in the present case. The assessee, during the course of original assessment, had failed to furnish informations truly and fully. The Assessing Officer has material to establish that the assessee has not furnished the informations truly and fully and therefore, the reopening of proceedings initiated is well within the scope of Proviso clause to Section 147 of the Act and thus, the writ petition is liable to be rejected.

10.To substantiate the said ground, the learned Standing Counsel solicited the attention of this Court with reference to the reasons furnished for reopening of assessment in proceedings dated 07.05.2018. Undoubtedly, the petitioner has furnished informations. However, certain other particulars, which all are required to be furnished, were not furnished during the original assessment and the learned Standing Counsel referred to the reasons provided in Clause III of the reasons for reopening dated 07.05.2018, which reads as hereunder:-

> "III. Investment in pursuance of house property
>
> The above said property was purchased on 16.02.2011 for Rs.3,05,20,240 including the stamp duty and registration fee and availed exemption u/s-54 for the property sold on 18.02.2011 for Rs.3,30,00,000. The payment for purchase of the said new property was made prior to the existing property sold as follows:-
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> | | | |
> |---|---|---|
> | 1. | VIDE DD Nos. | Rs.2,25,00,000 |
> | 2. | REGN & Stamps | Rs. 25,20,240 |
> | | TOTAL | Rs.2,50,20,240 |
>
> The source for the above payment for purchase of the new house property was not explained. The income admitted was Rs.15,92,960/- only. Even taking into account the above receipt of Rs.8,88,468 for contract as per 26 AS, the balance of Rs.2,00,18,572 has to be explained. Under the above circumstances, the unexplained investment in the new house property for claiming exemption u/s.54 has to be brought to tax u/s 69 of the ACT. Rs.2,00,18,572/-"

11. The learned Standing Counsel referred to the disposal of the objections by the Assessing Officer in proceedings dated 07.09.2018. It is contended that the earlier proceedings made in the case of the assessee was limited scrutiny on the question of taxability of sale property. The issue considered in the limited scrutiny was only the funds received by the assessee by way of sale proceeds and taxability under the head "capital

gains on sale of property." The initiation of reopening proceedings relates to outgoing of funds in the form of investment in property and mutual funds. Since such issue was not discussed in the original assessment proceedings, no opinion was formed on these issues in such proceedings and hence, there is no change of opinion.

12.The learned Standing Counsel relied on Explanation 1 to Section 147 of the Act and contended that mere production of details and books of accounts before the Assessing Officer at the time of original assessment is immaterial, as far as the reopening of proceedings initiated under Section 148 of the Act is concerned. Thus, the writ petition is liable to be rejected.

13.This Court is of the considered opinion that perusal of the assessment order as well as the objections raised by the petitioner reveal that undoubtedly, the petitioner had furnished the details regarding the sale and purchase of property through the capital gains. The petitioner has furnished details and documents pertaining to the sale and purchase of the properties. The questionnaire issued by the Assessing Officer during the original assessment was complied with and the petitioner has furnished all the details which were considered by the Assessing Officer. However, this Court has to consider whether the reopening of proceedings in the case on hand is sustainable with reference to the Proviso clause to Section 147 of the Act. If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment and the reopening is to be done beyond the period of four years and within six years, then the Assessing Officer must have materials to establish that the assessee had not disclosed fully and truly all material facts necessary for his assessment. Thus, disclosure of material facts fully and truly is the pre-condition for reopening of proceedings under Section 147 of the Act beyond the period of four years and within a period of six years.

14.Let us examine, whether the mandatory requirements have been complied with in the present case or not.

15.Perusal of the reply/objections by the petitioner, it is seen that the petitioner has given details regarding the queries raised by the Assessing Officer. However, the reasons for reopening would reveal that mere information provided by the assessee in the present case was not full and true disclosure in respect of investment and purchase of house property. The reasons furnished in proceedings dated 07.05.2018 would reveal that the source for the above payment for purchase of new house property was not explained. The income admitted was Rs.15,92,960/- only. Even taking into account the above receipt of Rs.8,88,468/- for contract as per 26AS, the balance of

Rs.2,00,18,572/- has to be explained. Under the above circumstances, the unexplained investment in the new house property for claiming exemption under Section 54 has to be brought to tax under Section 69 of the Act. The total income/investment escaped assessment was calculated as Rs.2,34,27,280/-. Therefore, certain intricacies with reference to the informations and details provided by the assessee at the time of original assessment were culled out and the Assessing Officer has reason to believe that the said informations were not furnished truly and fully by the assessee at the time of original assessment. Thus, he has formed an opinion that the income/investment escaped assessment is Rs.2,34,27,280/-. With these reasons, the Assessing Officer considered the objections and passed an order dated 07.09.2018, disposing of the objections wherein also, he has stated that it is a limited scrutiny, which was done earlier and the proceedings are reopened now regarding the outgoing of funds in the form of investment in property and mutual funds. The said position in the order is substantiated by way of counter affidavit and it is relevant to extract paragraphs 16, 17, 18, 19 and 20 of the counter affidavit, which all are extracted hereunder:-

> "16.It is submitted that as far as the merits of the issue is considered it is found as a fact among others that during the original assessment proceedings notice under section 143(2) r.w.s 129 dated 15.7.2013 was issued. Later notice under Section 142(1) was issued calling for details which were general in nature and details with respect to sale and purchase of immovable and movable properties only in relation to the issue of capital gains were called for. The case was selected for scrutiny by computer aided scrutiny system and the scrutiny assessment was initiated and completed. The purpose of scrutiny assessment was only to scrutinize and assess the capital gains from the sale of property.
>
> 17.It is submitted that the case was selected for limited scrutiny to enquire the only issue of "AO to examine taxability of sale of property. Hence the scrutiny assessment was limited only to the issue of capital gains on sale of property. Therefore, the issues such as source for purchase of new immovable property, whether all receipts are treated as income etc., were not examined during the course of original assessment.
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> 18.It is submitted that the first issue in the reasons for re-opening is non-disclosure of income from three parties as fee for technical

services. Petitioner claims that he has furnished explanations for the same during the course of original assessment proceedings. A look at the notice u/s 143(2) and 142(1) with annexure dated 15.07.2013 annexed clearly reveals that AO never required the petitioner to clarify on this issue. No other notice was issued to the petitioner during the course of original assessment proceedings seeking clarification on the issue. Even the order sheet notings annexed reflecting subsequent hearings does not show AO making any requirement regarding claiming reconciliation of these receipts. Even otherwise, claiming credit for TDS on these receipts in the hands of petitioner where income there from was claimed to be offered in the hands of another entity is clear violation of sec. 199 of the I.T.Act.

19.It is submitted that second and third issue also, petitioner claims that the same were explained during the course of original assessment proceedings. However, AO did not require the petitioner to explain these aspects during the course of original assessment proceedings as evident from evidence as record. Hence there was omission and failure on the part of the petitioner to disclose material facts necessary for assessment during the course of original assessment proceedings. Hence reopening of assessment u/s 147 is valid.

20.It is submitted that the initiation of reassessment proceedings relates to the outgoing of funds in the form of investment in property and mutual funds and also the professional receipts of the assessee which were never the subject matter of the original assessment. The present reassessment proceedings is made in accordance with law as per the full bench decision reported in 248 ITR 485 (DEL).”

16.This Court is of the considered opinion that when there are certain discrepancies with reference to the informations provided and the Assessing Officer has reason to believe that certain informations were not furnished truly and fully in respect of the informations provided at the time of assessment then also, the authority competent is empowered to reopen the proceedings. In this regard, it is relevant to consider Explanation 1 to Section 147 of the Act, which states that production before the Assessing Officer of account books or other evidence from which material evidence could due diligence have been discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of the foregoing proviso. Even Explanation 2 to Section 147 provides various circumstances under which reopening of assessment shall be done. Where assessment has been made, but income chargeable to tax has been under-assessed, then also re-assessment can be made. There are numerous circumstances, which all are contemplated for the purpose of reopening of assessment and once, the Assessing Officer has reason to believe that the income chargeable to tax has escaped assessment on account of the fact that the assessee has not disclosed fully and truly all material facts necessary for his assessment, then initiation under Section 147 shall be made beyond the period of four years and within six years. This being the scope of Section 147 for reopening of assessment, this Court do not find any acceptable reason for the purpose of interfering with the reopening proceedings initiated by the authorities competent and it is for the petitioner to participate in the assessment/re-assessment proceedings and defend his case in the manner known to law. The respondent is directed to complete the assessment as expeditiously as possible without causing any undue delay.

With the above observations and directions, this writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

abr

To

The Assistant Commissioner of Income Tax,
Non-Corporate Circle 14(1), Chennai,
No.121, Mahatma Gandhi Road,
Nungambakkam, Chennai-600 034.

+1cc to M/s.Hema Muralikrishnan, Advocate, S.R.No.30782

W.P.No.27810 of 2018

NRL(CO)
HS(02/08/2021)