IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.06.2021

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.30862 of 2018

and

W.M.P.Nos.36013, 36017, 36019 & 36021 of 2018 & 6662 of 2019

C.Anitha ...Petitioner

Vs.

Income Tax Officer,
Non Corporate Ward 1(1),
121, M.G. Road,
Nungambakkam,
Chennai - 600 034. ...Respondent

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 Respondent comprised in its notice issued under Section 148 of the Income Tax Act, 1961, for PAN: AALPA8804D, for the assessment year 2011-12, dated 31.03.2018 and all proceedings in furtherance thereof, including but not limited to the order dated 22.10.2018 passed by the Respondent disposing of the petitioner's objections to the reopening of her income tax assessment for the assessment year 2011-12, 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 2011-12.

For Petitioner : Mr.Suhrith Parthasarathy

For Respondent : Ms.Hema Murali Krishnan
Senior Standing Counsel for Income Tax

ORDER

The initiation of Writ proceedings under Section 147 of the Income Tax Act and the notice issued under Section 148 of the Income Tax Act as well as disposal of objections passed by the respondent in proceedings dated 22.10.2018 are under challenge in the present Writ Petition.

2.The petitioner states that the total income earned by her for the assessment year 2011-2012 is well below the maximum amount, which is not chargeable to the Income Tax. Thus, the petitioner had not filed her Income Tax returns for the assessment year 2011-2012 under Section 139 of the Income Tax Act, 1961.

3.The petitioner received a notice under Section 148 of the Income Tax Act on 31.03.2018 stating that the respondent has reasons to belief that income chargeable to tax in respect of Assessment Year 2011-2012 has escaped Assessment. In response there to, the petitioner requested the respondent to forward the reasons for reopening. The respondent supplied the reasons for reopening by stating that 1.Purchase of immovable property amounting to Rs.1,05,02,000/-, 2.Interest from AXIS Mutual Fund as reflected in 26AS of Rs.57,600/-, 3.Premia from MAX NEW YORK LIFE INSURANCE COM LTD of Rs.2,62,901/-. The respondent has further stated that the previous communications in this regard do not yield any response from the petitioner.

4.The petitioner stated that all these transactions were already looked into by the office of the respondent from the year 2013 and however, the petitioner informed the respondent that her income for Assessment Year 2011-2012 did not exceed the maximum amount not chargeable to tax. However, she is duly responsible to all previous communications from the respondent with reference to the Assessment Year 2011-2012. Thus, the petitioner submitted objections for reopening of Assessment fof the year 2011-2012. However, the respondent has not considered the objections raised by the petitioner and passed the order impugned dismissing all the objections and to reopen the Assessment for the Assessment Year 2011-2012 by holding that the income escaped assessment.

5.The learned counsel for the petitioner reiterated that mere purchase of property would not be a ground to invoke Section 147 of the Income Tax Act. The very reasons stated that reopening of Assessment is that as per the information available, 1.Purchase of immovable property amounting to Rs.1,05,02,000/-, 2.Interest from AXIS Mutual Fund as reflected in 26AS of Rs.57,600/-, 3. Premia from MAX NEW YORK LIFE

INSURANCE COM LTD of Rs.2,62,901/-. These factual details were already furnished and made available with the office of the respondent. Thus, there is no reason for initiation of proceedings under Section 147 of the Income Tax Act, 1961.

6.This Court is of the considered opinion that such factual adjudications cannot be undertaken by the High Court under Article 226 of the Constitution of India. The only requirement contemplated under Section 147 of the Income Tax Act, 1961 is to ensure whether the authority competent has reason to belief for reopening of Assessment in respect of the income chargeable to Tax as escaped assessment. In the present case, the reasons furnished for reopening reveals that an immovable property was purchased for construction amounting to Rs.1,05,02,000/-, Interest from AXIS Mutual Fund as reflected in 26AS of Rs.57,600/- and further, the Premia from MAX NEW YORK LIFE INSURANCE COM LTD of Rs.2,62,901/-. All these reasons are furnished for reopening of Assessment are to be adjudicated with reference to the documents and evidences and or informations made available. Roving cannot be conducted by the High Court under Article 226 of the Constitution of India in a Writ Proceedings. If any prima facie case is established and the competent authority has reason to belief regarding Tax escaped assessment, then the authority must be permitted to proceed with the assessment or re-assessment. In the present case, the petitioner made an attempt to adjudicate the issues on facts by holding that mere purchase of property is not a ground to invoke under Section 147 of the Income Tax Act. Beyond the facts, the transactions made, the sources on hand and other details are to be scrutinized by the Assessing Officer for the purpose of forming an opinion. Admittedly the petitioner has not filed Returns of income for the Assessment Year 2011-2012. Therefore, the Assessment or Re-Assessment is to be made with reference to the reasons furnished. This being the factum established, the petitioner has to proceed with the process by producing all the documents and evidences to defend their case.

7.It is brought to the notice of this Court that pursuing of the interim order, the Assessment Officer was permitted to complete the adjudication and pass a final order of Assessment. Thus, the respondent is permitted to communicate the Assessment Order, if any already passed to the Writ Petitioner, enabling the petitioner to redress her grievances by preferring an appeal under the provisions of the Income Tax Act, if advised.

8.Accordingly, the Writ Petition stands dismissed. However, there shall be no order as to costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

krk

To

The Income Tax Officer,
Non Corporate Ward 1(1),
121, M.G. Road,
Nungambakkam,
Chennai – 600 034.

+1cc to M/s. Hema Muralikrishnan, Advocate, Sr.28369.
+1cc to Mr. Suhrith Parthasarathy, Advocate, Sr.28491

W.P.No.30862 of 2018

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NSK 20/07/2021