IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.04.2021

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.33144 of 2018
and
W.M.P.No.38444 of 2018

Mr.K.Rajesh ...Petitioner

Vs.

1.The Assistant Commissioner of Income Tax,
Non-Corporate Circle I
63, Race Course Road,
Coimbatore - 641 018.

2.Commissioner of Income Tax (Appeals)-3
63, Race Course Road,
Coimbatore - 641 018. ...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the notice issued by the 1st respondent under Section 148 of the Income Tax Act, 1961 dated 28.02.2018 in respect of late Mrs.K.Srivalli, PAN No.ALJPS3155L to quash the same.

For Petitioner : Mr.Niranjan Rajagopalan
For M/s.G.R.Associates

For Respondent: Mr.A.P.Srinivas
Senior Standing Counsel[IT]

ORDER

The Notice issued under Section 148 of the Income Tax Act to re-open the assessment of the year 2009-10 is sought to be quashed in the present writ petition.

2. The preliminary ground raised by the petitioner is that the notice dated 28.02.2018 was addressed to one Smt.K.Srivalli, who is the mother of the writ petitioner / Mr.K.Rajesh and it is contended that the assessee / Smt.K.Srivalli died on 02.07.2016.

3. The learned counsel for the petitioner made a submission that notice to re-open the assessment cannot be issued on a dead person and therefore, the notice itself is untenable.

4. The learned Senior Standing counsel appearing on behalf of the respondents objected the said contentions by stating that an adjudication / enquiry is required for the purpose of establishing these facts and in this regard, the petitioner has to submit the details and documents before the authorities, enabling them to form an opinion and proceed in accordance with law. However, the present writ petition is filed by one Mr.K.Rajesh and the impugned notice was issued to his deceased mother Smt.K.Srivalli.

5. This Court is of the considered opinion that all such material facts and circumstances are to be established by submitting proof and evidences and such an exercise cannot be done by the High Court under Article 226 of the Constitution of India. The authorities competent must conduct an enquiry in this regard and take a decision and thereafter, proceed in accordance with law and by following the procedures. For this purpose, the matter is remanded back to the respondents for fresh adjudication.

6. Accordingly, the notice issued by the first respondent under Section 148 of the Income Tax Act, 1961 dated 28.02.2018 is quashed and the matter is remanded back to the respondents for fresh adjudication by affording opportunity to the writ petitioner and pass orders on merits and in accordance with law and by following the procedures as contemplated. The said exercise is directed to be done within a period of three(3) months from the date of receipt of a copy of this order. The writ petitioner is directed to co-operate for the disposal of the enquiry proceedings and not to seek for an adjournment on flimsy grounds.

7. With these observations, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Kak

To

1.The Assistant Commissioner of Income Tax,
Non-Corporate Circle I
63, Race Course Road,
Coimbatore - 641 018.

2.Commissioner of Income Tax (Appeals)-3
63, Race Course Road,
Coimbatore - 641 018.

+1cc to Mr.A.P.Srinivas, Advocate Sr.23304

W.P.No.33144 of 2018

rld[co]
srg 10/06/2021