



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.33803 of 2018
and W.M.P.No.39259 of 2018

Rajmannar Ramaswamy

... Petitioner

Vs.

1.Income Tax Officer,
Ward-1(3),
Tirupur.

2.Income Tax Officer (Intl. Taxation), Coimbatore,
1510, Mayflower, Midcity Building,
Trichy Road, Coimbatore 18.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records on the file of the respondents in PAN: AMUPR6293E and quash the impugned notice issued by the 1st respondent under Section 148 of the Income Tax Act, 1961, dated 31.03.2017 as well the impugned letter in PAN: AMUPR6293E/ITO/Intl.Taxn/CBE/2018-19 dated 06.12.2018, issued by the 2nd respondent, as arbitrary and without jurisdiction.

For Petitioner : Mr.R.Sivaraman

For Respondents : Mr.A.P.Srinivas
(Senior Standing Counsel for IT)

ORDER

The notice issued under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') in proceeding dated 31.03.2017 as well as the impugned letter issued by the 2nd respondent on 06.12.2018 are sought to be quashed in the present Writ Petition.

2.The petitioner states that he is not an Assessee on the file of the Income Tax Officer, Ward No.1(3), Tirupur, India, and he has no taxable income in India, except, certain bank interest in which TDS has been duly deducted by the banks under



WEB COPY

Section 195 of the Act. The petitioner states that he had applied for a Permanent Account Number (hereinafter referred to as 'PAN'), showing his mother's address as No.488, Mani Road, Kunnathur, Erode-638 103. The PAN was allotted in PAN No: AMUPR6293E. Since the petitioner is a Non-Resident Indian, he has not filed any Income Tax Returns for the last fifteen years and the said factors are known to the respondents-Income Tax Department also. Shockingly, the 1st respondent has issued a notice under Section 148 of the Act, dated 31.03.2017 and the said notice was booked at Tirpur Post-Office only on 04.04.2017 and the same was received at the native place of the writ petitioner, more specifically, by his brother, on 05.04.2017. The notice contemplates that the 1st respondent has "reason to believe" that there is escapement of income for the Assessment Year 2010-11. However, the notice under Section 148 of the Act, dated 31.03.2017, was sent to the native address of the petitioner in India and it was collected by his brother, with whom the petitioner has no cordial relationship.

3.The learned counsel for the petitioner made a submission that admittedly, the 1st respondent has no jurisdiction to issue notice under Section 148 of the Act. However, subsequent letter sent by the 2nd respondent in proceeding dated 06.12.2018 is also without jurisdiction, as Section 148 notice was not served on the writ petitioner, as contemplated under the provision. Section 148, in unambiguous terms, contemplates that the notice must be served to the assessee. However, no such notice was served to the petitioner in the present case. This apart, the last date for reopening of assessment falls on 31.03.2017. However, the notice cover was franked by the concerned Post-Office only on 04.04.2017 and therefore, the notice was issued beyond the period of limitation and on that ground also, the impugned orders are liable to be set aside. It is contended that the 1st respondent has no jurisdiction, as the petitioner is a resident of Belgium right from the year, 1991, and the respondents also have the knowledge about this fact and the petitioner, being a Non-Resident Indian, having no income in India, need not file any Return of Income. In respect of the bank deposits, the TDS are being recovered by the bankers and therefore, the very initiation is without jurisdiction, beyond the period of time limit contemplated and the transferring of proceeding to the 2nd respondent is also improper. For all these reasons, the impugned orders are liable to be set aside.

4.The learned Senior Standing Counsel appearing for the respondents disputed the said grounds by stating that the petitioner submitted his application for getting PAN by furnishing the address, wherein his mother resides. If at all there is any change of address, it is the duty of the assessee to inform the same to the department. The department issued



WEB COPY

notice based on the last known address, which is available in the PAN of the assessee. It is not in dispute, the notice under Section 148 of the Act was issued to the address furnished by the petitioner and recorded in the PAN records. Therefore, the department cannot be blamed and in the event of any change of address, it is the duty of the assessee to submit proper application and change the address in PAN, which the petitioner has failed to do. Therefore, he cannot now rely on the ground that the notice under Section 148 of the Act was issued in a wrong note. Even in respect of the subsequent order passed by the 2nd respondent, it is clearly stated that the petitioner has to submit his reply, which should reach the office of the 2nd respondent on or before 14.12.2018, as the case is getting time barred on 31.12.2018. The 2nd respondent requested the petitioner to furnish the records and details, enabling the authorities to proceed with re-assessment proceedings. Relying on the said factual aspects, the learned Senior Standing Counsel made a submission that the Writ Petition is pre-matured, as the petitioner has to furnish the records and the department has to give the reasons for reopening of assessment and the procedures contemplated under the provisions of the Act and the principles laid down by the Hon'ble Apex Court in the case of GKN Driveshafts India Ltd., Vs. ITO reported in 259 ITR 19 (SC) are to be followed scrupulously. As far as the jurisdiction point is concerned, undoubtedly, the 1st respondent issued the notice under Section 148 of the Act in the last known address of the petitioner and subsequently, when the department came to know that the 2nd respondent is the jurisdictional officer, the files were transferred to the 2nd respondent, who in turn, issued a letter to the petitioner on 06.12.2018, asking him to furnish information and details for the purpose of proceeding with the re-assessment. Instead of furnishing the details and producing the documents, the petitioner has chosen to file the Writ Petition, mainly on the ground that the notice was issued beyond the period of limitation. As far as the last date for issuance of notice, under Section 148 of the Act, in the present case is concerned, it is 31.03.2017 and the respondents have produced the postal receipt, showing that the notice was registered before the concerned Post-Office on 31.03.2017. Thus, for all purposes, the notice has been issued on 31.03.2017 and delivery of the cover to the assessee or in the last known address, may not be a deciding factor for the purpose of retaining the period of limitation. Once the notice under Section 148 of the Act is issued within the period of limitation by despatching the notice in the Post-Office, the same would be sufficient to meet out the requirements. Section 149 of the Act itself contemplates time limit for notice. Once the time limit is contemplated and within the time limit, the notice has been despatched from the office of the Income Tax Department, the same would be sufficient to meet out the requirement and delivery of the notice cannot be



considered for the purpose of invalidating the notice issued by the authority, before the time limit.

5. It is possible in many circumstances, the addressee may receive the cover one or two days later or on account of various other reasons, the postal department may deliver after three or four days and all these circumstances are possible. Thus, the delivery of cover is immaterial and if the department could be able to establish that the notice was issued and despatched before the expiry of limitation, the same would be sufficient to meet out the requirement of Section 149 of the Act. In the present case, the postal receipt is produced to establish that the notice was despatched on 31.03.2017 and therefore, the point of limitation raised stands failed.

6. The authorities once identified that the jurisdictional office is different, then transfer of such files to the jurisdictional office is the procedure to be followed and in the present case, the 1st respondent rightly transferred the case to the 2nd respondent to proceed with reopening of assessment proceedings and the 2nd respondent, in turn, sent a letter to the petitioner/assessee on 06.12.2018 and the petitioner, instead of responding to the letter, has chosen to file the Writ Petition and therefore, this Court is of the considered opinion that the Writ Petition is pre-matured and the petitioner has to establish his case by producing documents and furnishing information to the 2nd respondent, who, in turn, has to follow the procedures contemplated and proceed with re-assessment proceedings. Recently in the case of PCIT Vs. Iven Interactive Limited (Supreme Court) in Civil Appeal No.8132 of 2019, dated 18.10.2019, the Hon'ble Supreme Court has held as follows:

"7. Now so far as the observations made by the High Court while concurring with the view of the learned Tribunal that merely by filing of return of income with the new address, it shall be enough for the assessee to discharge its legal responsibility for observing proper procedural steps as per the Companies Act and the Income Tax Act is concerned, we are of the opinion that mere mentioning of the new address in the return of income without specifically intimating the Assessing Officer with respect to change of address and without getting the PAN database changed, is not enough and sufficient. In absence of any specific intimation to the Assessing Officer with respect to change in address and/or change in the name of the assessee, the Assessing Officer would be justified in sending the notice at the available address mentioned in the PAN database of the assessee, more particularly when



WEB COPY

the return has been filed under E-Module scheme. It is required to be noted that notices under Section 143(2) of the 1961 Act are issued on selection of case generated under automated system of the Department which picks up the address of the assessee from the database of the PAN. Therefore, the change of address in the database of PAN is must, in case of change in the name of the company and/or any change in the registered office or the corporate office and the same has to be intimated to the Registrar of Companies in the prescribed format (Form 18) and after completing with the said requirement, the assessee is required to approach the Department with the copy of the said document and the assessee is also required to make an application for change of address in the departmental database of PAN, which in the present case the assessee has failed to do so. "

In view of the facts and circumstances, the petitioner has not raised any acceptable ground for the purpose of interfering with the orders impugned.

7. Accordingly, the Writ Petition is devoid of merits and stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

gsa
To

1.The Income Tax Officer,
Ward-1(3), Tirupur.

2.Income Tax Officer (Intl. Taxation), Coimbatore,
1510, Mayflower, Midcity Building,
Trichy Road, Coimbatore 18.

+1cc to Mr.A.P.Srinivas, Advocate Sr.30001

W.P.No.33803 of 2018

pl[co]
srg 22/07/2021