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.34136 of 2018
and W.M.P.Nos.39667 of 2018 & 6653 of 2019

Charu K. Bagadia,
W/o.Ketan C. Bagadia ..Petitioner

-vs-

1.Assistant Commissioner of
Income Tax-23(2), Mumbai,
104, 1st Floor, Matru Mandir,
Tardeo Road, Mumbai-07.

2.Assistant Commissioner of Income Tax
Corporate Circle - 4(2), Chennai,
Room No.433, 4th Floor, Aayakar Bhavan,
Main Building, 121, Nungambakkam High Road,
Chennai-34. ..Respondents

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 respondents in PAN: AAKPK7417K in issuing the impugned notice under Section 148 of the Income Tax Act, 1961 dated 28.03.2018 by the 1st respondent as well as the consequential notice under Section 143(2) read with Section 129 of the Income Tax Act, 1961 dated 14.12.2018 issued by the 2nd respondent and quash the same as illegal, arbitrary and without jurisdiction.

For Petitioner	:	Mr.Veerabathran Prasanth for Mr.R.Sivaraman
For Respondents	:	Ms.Hema Muralikrishnan, Senior Standing Counsel

ORDER

The notice issued under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as "the IT Act"), dated 28.03.2018 by the first respondent as well the consequential notice issued under Section 143(2) read with Section 129 of the IT Act, dated 14.12.2018 issued by the second respondent, are sought to be quashed in the present writ petition.

2.The contention of the learned counsel for the writ petitioner is that the impugned notice under Section 148 of the IT Act dated 28.03.2018, issued by the first respondent, Assistant Commissioner of Income Tax, Circle 23(2), Mumbai is without any jurisdiction.

3.It is contended that the petitioner is an assessee at Chennai and therefore, the notice issued by the incompetent authority at Mumbai under Section 148 of the IT Act for reopening of an assessment is in violation of the provisions of the IT Act.

4.The learned counsel for the petitioner reiterated that on receipt of the notice from the first respondent, the petitioner sent a letter dated 26.04.2018 to the first respondent stating her Permanent Account Number and further stating that she is assessed by DCIT, Corporate Circle 4(2), Aaaykar Bhavan, M.G.Road, Nungambakkam, Chennai. Thus, a request is made to drop the proposal to assess/re-assess the income for the assessment year 2011-12. However, the second respondent, Assistant Commissioner of Income Tax, Corporate Circle-4(2), Chennai subsequently issued a notice under Section 143(2) read with Section 129 of the IT Act in proceedings dated 14.12.2018 and thereafter, issued another proceedings dated 14.12.2018 directing the petitioner to file return of income for the assessment year 2011-12 in response to the notice under Section 148 of the IT Act dated 28.03.2018, electronically and submit a copy of the same to the second respondent on or before 20.12.2018.

5.The learned Senior Standing Counsel appearing on behalf of the respondents made a submission that the first respondent at Mumbai had issued the original order reopening the assessment under Section 148 of the IT Act in proceedings dated 28.03.2018 based on the investigation conducted and it is contended that the property belongs to the petitioner situate at Mumbai and by collecting details regarding the immovable of the petitioner at Mumbai, the authority at Mumbai issued a notice under Section 148 of the IT Act. Subsequently, they came to understand that the petitioner is assessed at Chennai. Thus, the entire files pertaining to the investigation and the initiation of proceedings under Section 147 of the IT Act were transferred to the authority at Chennai, who in turn, commenced the proceedings by issuing notices on 14.12.2018. Thus, there is no irregularity or infirmity as such and it is only a continuation of proceedings and the petitioner has to submit her objections in respect of the notice issued under Section 148 of the IT Act.

6.Sections 147 and 148 of the IT Act indicate that the initiation must be done by the Assessing Officer. In the case of the petitioner, the Assessing Officer is at Chennai. Thus, the order initially issued by the first respondent, though improper, need not be set aside in view of the fact that the said proceedings were subsequently transferred to the Income Tax Authorities at Chennai. The first respondent has not adjudicated the issues, nor conducted any enquiry. However, the first respondent conducted certain investigation and identified the immovable properties belong to the petitioner situate at Mumbai. All the files are now transferred to the authority at Chennai, who in turn issued notices on 14.12.2018 directing the petitioner to file the return of income for the assessment year 2011-12, in response to the notice issued under Section 148 of the IT Act, dated 28.03.2018. Though the second respondent has commenced the proceedings by issuing letters dated 14.12.2018, the petitioner is no way prejudiced and she has to avail an opportunity by submitting her objections and by following the procedures contemplated under the IT Act.

7.In view of the fact that the entire proceedings initiated by the first respondent has already been transferred to the authority at Chennai, no prejudice is caused to the petitioner and she is at liberty to defend her case in the manner known to law and by filing objections and an opportunity be provided to the petitioner as prescribed.

8.With the above observations, this writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1.Assistant Commissioner of
Income Tax-23(2), Mumbai,
104, 1st Floor, Matru Mandir,
Tardeo Road, Mumbai-07.

2.Assistant Commissioner of Income Tax
Corporate Circle - 4(2), Chennai,
Room No.433, 4th Floor, Aayakar Bhavan,
Main Building, 121, Nungambakkam High Road,
Chennai-34.

+1 cc to Mr.Hema Muralikrishnan,Advocate Sr.No.23210

W.P.No.34136 of 2018

SR II(CO)
KKV/21/06/2021