IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13.10.2022

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.No.650 of 2020 and
WMP.Nos.765, 766 & 8322 of 2020

Mrs.Preethi Jeyakumar ... Petitioner

Vs

The Deputy Commissioner of Income Tax,
Non Corporate Circle 8(1),
Chennai 600 034. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records relating to the notice under Section 148 issued by the Respondent in PAN AFJPJ 6622B in Notice No.ITBA/AST/S/148/2018-19/1015499205(1) and quash the impugned notice dated 28.03.2019 issued under Section 148 of the Income Tax Act, 1961 for assessment year 2012-13 and the consequential assessment order passed on 16.11.2019 under Section 143(3) r.w.s. 147 of the Income Tax Act, 1961 by the Respondent Deputy Commissioner as illegal and quash the same as without jurisdiction.

For Petitioner : Mr.R.Kumar

For Respondent : Mr.Prabu Mukund Arunkumar
Junior Standing Counsel

O R D E R

Heard Mr.R.Kumar, learned counsel for the petitioner and Mr.Prabu Mukund Arunkumar, learned Junior Standing Counsel for the respondent.

2.The petitioner is the daughter and legal representative of one Melvin David Jayakumar (in short 'assessee'). The challenge is to an order of re-assessment passed under Section 143(3) r/w Section 147 of the Income Tax Act, 1961 (in short 'Act') and several grounds are raised.

3. The assessee had filed a return of income for assessment year (AY) 2012-13 within time, in respect of which there had been no scrutiny initiated. An intimation under Section 143(1) had been issued in March 2018. The Criminal Investigation Wing of the Income Tax Department appears to have sought certain particulars in regard to the claim of exemption under Section 54F of the Act from the assessee. Information as sought for had been furnished by the assessee on 14.03.2018 along with joint development agreement and other particulars.

4.On 08.02.2019, the assessment and appellate orders in the case of the assessee's daughter, upon which the petitioner had placed reliance, had also been placed before the Income Tax Officer, Intelligence and Criminal Investigation Wing. This was followed by a notice under Section 148 of the Act on 28.03.2019, in response to which the assessee, on 03.04.2019, filed a return of income along with required annexures including a computation of total income with capital gains.

5.On 12.04.2019, the assessee passed away. It appears that all other notices had been issued to the assessee electronically and had been lost sight of by the family members. Thus, the impugned order of assessment has come to be passed without following any of the procedures as set out by the Hon'ble Apex Court in the case of *GKN Driveshafts (India) Vs. Income Tax Officer* (259 ITR 19), the procedure being as follows:

> *'We see no justifiable reason to interfere with the order under challenge. However, we clarify that when a notice under Section 148 of the Income tax Act is issued, the proper course of action for the noticee is to file return and if he so desires, to seek reasons for issuing notices. The assessing officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the noticee is entitled to file objections to issuance of notice and the assessing officer is bound to dispose of the same by passing a speaking order. In the instant case, as the reasons have been disclosed in these proceedings, the assessing officer has to dispose of the objections, if filed, by passing a speaking Order before proceeding with the assessment in respect of the abovesaid five assessment years.'*

6.Per the procedure set out above, upon compliance with the statutory requirements in the Section 148 notice, the assessee is to be furnished a copy of the reasons recorded and afforded opportunity of raising objections to the assumption of jurisdiction. A speaking order is to be passed by the officer and it is only thereafter, and if the assessing officer rejects the objections, that proceedings for assessment are to be taken up.

7.Thus, in this case, since the aforesaid procedure has been by-passed by virtue of the circumstances mentioned above, the impugned order of assessment dated 16.11.2019, being violative of such procedure, is set aside.

8.The petitioner is directed to file objections to assumption of jurisdiction within a period of four (4) weeks from today. Upon receipt thereof, the petitioner shall be heard and a speaking order on the aspect of assumption of jurisdiction shall be passed by the officer. Thereafter, and if the officer believes it appropriate, proceedings for assessment shall be taken up and finalised. The entirety of the exercise shall be completed within a period of twelve (12) weeks from date of receipt of a copy of this order.

9.With these directions, this writ petition stands disposed. No costs. Connected miscellaneous petitions are closed.

13.10.2022

vs
Index : Yes/No
Speaking Order

To

The Deputy Commissioner of Income Tax,
Non Corporate Circle 8(1),
Chennai 600 034.

DR.ANITA SUMANTH, J.

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