IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.10.2022

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P. Nos.1601 of 2020 and 35529 of 2019
and W.M.P. Nos.1872 & 1874 of 2020
and 36372, 36375 & 36370 of 2019

Mrs.Indra Vijayaraghavan .. Petitioner in both WPs

Vs

The Income Tax Officer
Non Corporate Ward 1(5)
67A Race Course
Coimbatore 641 018 .. Respondent in both WPs

PRAYER in W.P. No.1601 of 2020: Writ petition filed under Article 226 of the Constitution of India for a Writ of Certiorari calling for the records on the file of the respondent in PAN:AECPV711H ITBA/COM/F/17/2019-20/1022735831(1) and quash the impugned order dt.20.12.2019 passed u/s 143(3) r.w.sec.147 of the Income Tax Act, 1961 by the respondent as illegal and without jurisdiction.

PRAYER in W.P. No.35529 of 2019: Writ petition filed under Article 226 of the Constitution of India for a Writ of Certiorari calling for the records relating to the notice u/s 148 issued by the respondent in PAN AECPV

7111H and quash the impugned notice dated 28.03.2019 issued u/s.148 of the Income Tax Act, 1961 for assessment year 2012-13 as illegal and without jurisdiction.

For Petitioner in both WPs	:	Mr.R.Kumar
For Respondent in both WPs	:	Mr.A.P.Srinivas Senior Standing Counsel

COMMON ORDER

Heard Mr.R.Kumar, learned counsel for the petitioner and Mr.A.P.Srinivas, learned Senior Standing Counsel for the respondent.

2. A common order is being passed in these writ petitions that challenge proceedings for re-assessment in terms of Section 147/148 of the Income Tax Act, 1961 (in short 'Act'). The petitioner had, in her return of income for Assessment Year (AY) 2012-13 claimed exemption under Section 54F of the Act in regard to a property admeasuring 15902.27 sq.ft. + 11772 sq.ft., held by herself and one Rukmani Venugopal.

3. The return was picked up for scrutiny and notices under Section 143(2) as well as questionnaires under Section 142(1) were issued to the

petitioner calling upon her to submit all details in regard to the joint development.

4. The detailed correspondences entered into between the petitioner and the respondent would indicate that all documents in relation to this transaction of joint development between the petitioner and one Suktha Real Estates P. Ltd., had been gone into by the assessing authority even at the stage of original assessment.

5. The order of assessment passed on 23.03.2015 under Section 143(3) states at para 2 as follows:

> *2.0 In response to the notice, Shri V.Srinivasan, CA and Shri C.N.Viswanathan, CA of M/s.VSV Associates, Chartered accountants appeared and filed Power of Attorney, copy of return of income, Total income computation statement, Bank account details, Joint venture agreement with M/s.Suktha Real Estates P. Ltd., copy of sale deed, Ledger accounts for the flat sold and for civil work, and details of deduction claimed u/s 54F, etc. The details filed by the assessee were perused and the claim of assessee is found in order.*

6. On 28.02.2018, summons under Section 133(6) of the Act had been issued to the petitioner from the Income Tax Officer (Intelligence & Criminal Investigation) Department, calling for various particulars in

connection with the claim of exemption under Section 54F. To this, the petitioner has responded on 09.03.2018 and 14.03.2018 supplying all necessary particulars.

7. Notwithstanding this, notice under Section 143 of the Act, dated 28.03.2019, a few days shy of expiry of six years limitation alleging escapement from tax, was issued. The petitioner filed return in response thereof and sought reasons for re-assessment that were supplied and read as follows:

> '*The assessee has admitted LTCG as nil in the ROI filed for the AY 2012-13 after claiming exemption of Rs.2,76,66,177/- u/s 54F of Income Tax Act. However, it is noticed that the assessee had not invested the LTCG on account of transfer of the UDS in any new residential building, as stipulated in the conditions for claiming exemption u/s 54F.*'

8. Since the proceedings had been initiated beyond the period of four years, the condition set out under the proviso to Section 147 is required to be satisfied, which requires that the Department establish that the petitioner had failed to make a full and true disclosure of relevant material, at the first instance.

9. The reasons make it apparent that it is the claim of exemption

under Section 54F that constitutes the subject matter of the re-assessment. This claim has been looked into in detail at the time of re-assessment and the reasons also stand testimony to the fact that there has been no new material that has been found by the officer in this regard. Thus, there is no deficiency in the disclosure made by the petitioner.

10. The decision of the Bombay High Court in *ICICI Securities Primary Dealership Ltd. v. Assistant Commissioner of Income-tax and others* (order dated 22.08.2006 in W.P. No.1919 of 2006) and the judgment of the Hon'ble Supreme Court in the case of *Assistant Commissioner of Income-Tax and others v. ICICI Securities Primary Dealership Ltd.* reported in [2012] 348 ITR 299 (SC) turn on facts and legal position very similar to the present case and conclude in favour of the assessee.

11. The operative portion of the High Court decision reads as follows:

> *In the facts of the present case, there is nothing new which has come to the notice of the Revenue. The accounts had been furnished by the petitioner when called upon. Thereafter, the assessment was completed under Section 143(3) of the Income-Tax Act. Now, on a mere relook, the officer has come to the conclusion that the income has escaped assessment and he is of course justified in his*

analysis. In our view, this is not something which is permissible under the proviso to Section 147 of the Income-tax Act which speaks about a failure on the part of the assessee to make a proper return. In the present case, no such case is made out on the record. In the circumstances, we allow this petition in terms of prayer (a) and quash and set aside the notice dated March 27, 2006, directing reopening of the assessment for the year 1999-2000.

12. The order dismissing the SLP reads thus:

Leave granted.

We have heard learned counsel on both sides.

The assessee had disclosed full details in the return of income in the matter of its dealing in stocks and shares. According to the assessee, the loss incurred was a business loss, whereas, according to the Revenue, the loss incurred was a speculative loss. Rejection of the objections of the assessee to the reopening of the assessment by the Assessing Officer, vide his order dated 23rd June, 2006, is clearly a change of opinion. In the circumstances, we are of the view that the order reopening the assessment was not maintainable.

The civil appeal is, accordingly, dismissed.

13. W.P.No.35529 of 2019 challenges the notice dated 28.03.2019 under Section 148 of the Act. When the matter had come up for admission, an interim stay had been granted citing the judgment in the case of ICICI (supra). It appears that the order of re-assessment impugned in

W.P.No.1601 of 2020 had been passed on the same date. It is hence that order of re-assessment also came to be challenged by way of writ petition, and both the writ petitions are being disposed by way of this order.

14. In the counter filed, the respondent relies on Explanation 1 to Section 147, which in my considered view, does not protect the impugned action. This Court, in *Asianet Star Communications Pvt. Ltd. vs ACIT* in (2019) 14 CCH 0550, has considered an identical legal position and concluded that the benefit available under Explanation 1 does not apply dehors satisfaction of the statutory condition contained in the proviso to Section 147.

15. In the light of the foregoing discussion, the impugned orders are liable to set aside and I do so. These writ petitions are allowed. Consequently, the connected writ miscellaneous petitions are closed.

13.10.2022

Index : Yes
Speaking order
Asr/sl

Dr.ANITA SUMANTH,J.,

Asr/sl

To
The Income Tax Officer
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