IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.2980 of 2022
and W.M.P.Nos.3151, 3152 and 3153 of 2022

Mr.Krishnakumar J.Desai, Legal Heir of
Late Mr.Jayendrakumar Kishanlal Desai
Block C-57, Flat A-3, Alsa Crest
First Main Road, Anna Nagar (East)
Chennai-600 102, Tamilnadu. …. Petitioner

-Vs-

The Income Tax Officer
Non Corporate Wad-7(1), Che
No.121, Mahatma Gandhi Road
Chennai – 600 034. …. Respondent

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the records on the file of the respondent in PAN AAHPD9161G and quash the impugned notice in ITBA/AST/S/148/2020-21/1032006059(1) dated 31.03.2021 issued under Section 148 of the Income Tax Act, 1961 as illegal and without jurisdiction.

For Petitioner :Ms.Vandana Vyas
for Mr.R.Sivaraman

For Respondent :Mrs.Hema Muralikrishnan
Senior Standing Counsel

O R D E R

The prayer sought for herein is for a Writ of Certiorari calling for the records on the file of the respondent in PAN AAHPD9161G and quash the impugned notice in ITBA/AST/S/148/2020-21/1032006059(1) dated 31.03.2021 issued under Section 148 of the Income Tax Act, 1961 as illegal and without jurisdiction.

2. For the Assessment Year 2013-14, since the period to make regular assessment under Section 143(3) of the Income Tax Act, 1961 (In short 'the Act') was over, the Revenue seems to have

assessed the original assessee, who is the father of the petitioner under Section 143(3) read with Section 147 of the Act. It is to be noted that, the assessment order dated 27.06.2017 was reopened under Section 147 of the Act, where there had been some reasons given by the Revenue as to on what basis the assessing authority has reasons to believe that there has been an escape of assessment and on that footing, the assessing authority proceeded to assess the income of the assessee and passed the assessment order on 27.06.2017.

3. It is to be noted that in the said assessment order dated 27.06.2016, the petitioner's disclosure of income to the extent of Rs.5,16,710/-, having been considered, was accepted.

4. Subsequently, the original assessee viz., Shri.Jayendrakumar Kishanlal Desai expired on 15.07.2018 for whom the present petitioner being the son, is the only legal heir, who obtained a Legal Heir Certificate to that effect from the concerned authority on 17.12.2018.

5. However, subsequently on 31.03.2021, a notice under Section 148 of the Act was issued, where it was stated by the assessing authority that, he had reasons to believe that the assessee's income chargeable to tax for the Assessment Year 2013-14 has escaped assessment within the meaning of Section 147 of the Act. Therefore, a notice under Section 148 was issued.

6. It is to be noted that, the said notice was issued in the name of the original assessee ie., the father of the petitioner. In response to the same, the present petitioner, son of the original assessee has filed a return, where he has signed, but not disclosed as to in what capacity he has signed.

7. Subsequently on 09.09.2021, the petitioner had made a request to the Revenue asking the request as to why the Revenue once again issued a notice under Section 148 with an intention to reopen the assessment under Section 147. The content of the said letter dated 09.09.2021 which was received by the Revenue on 09.09.2021 itself reads thus,

> “With reference to the above, I wish to state as follows:
>
> 1. I acknowledge the receipt of your above stated notice in relation to Financial Year ended 31.03.2013 relevant to Assessment Year 2013-14. In relation to this assessment year, I have duly filed my original return of income vide e-filing 721041880310713 on 31.07.2013.

2. Further in relation to above assessment year and in response to my above stated return of income duly filed u/s.139, I have been assessed U/s.143(1) by your good office and further u/s.143(3) read with Section 147 vide assessment order dated 27.06.2017.
3. In response to your above referred notice u/s.148, I have again e-filed the return for above assessment year vide ack.no.344566500230421 on 23.04.2021.
4. I enclose herewith the e-filing ack.for the return filed by me in response to your above stated notice u/s.148.
5. In view of the above, I request your good selves to kindly furnish the reasons recorded by you to come to the belief that my income chargeable to tax for the assessment year 2013-14 has escaped assessment, in spite of the above stated assessment orders duly passed by your office."

8. In response to the said query raised by the petitioner on behalf of the original assessee ie., his father, the Revenue has given the reasons for reopening by a communication dated 14.09.2021, where they have stated the following reasons.

"The reasons for reopening the assessment u/s.147 for A.Y.2013-14 is given below:

" Based on the information available with this office, it is seen that a search was conducted in the case of GFL FINANCIALS INDIA LTD., Investigation at the time of search revealed that the company's shareholding pattern is found to be rigged. The company accepted that the shares of the company were rigged to provide bogus Long Term Capital Gains. It also came to light that BSE Platform has been misused for providing accommodation entries to claim exemption under Sect.10(38) of the Act. Information revealed that assessee is one of the beneficiary and he has entered into share transaction to the tune of Rs.26,80,151/- with GFL Financials India P.Ltd., had filed return of income for the AY:2013-14 on 31.07.2013 admitting total income of Rs.5,15,030/-.

It is seen from the computation that the assessee had computed long term capital loss at Rs.71,388/- by selling the shares at Rs.28,99,951/- and indexed cost of acquisition of Rs.29,71,339/-.

> Since the claim of long term capital loss is not conclusively proved, the sale consideration of Rs.28,99,951/- is to be brought to tax net. Thus the assessee has not truly and fully disclosed all materials in the return of income. Hence, I am satisfied that the said amount of Rs.28,99,951/- is to be treated as undisclosed income of the assessee. In view of the above, I have reason to believe that income chargeable to tax has escaped assessment within the meaning of provisions of Sec.147 of the Act."

9. Only at this juncture, the present writ petition has been filed challenging the proceedings initiated for reopening the assessment under Section 147 of the Act, for the reasons assigned therein.

10. Heard Ms.Vandana Vyas, learned counsel appearing for the petitioner, who has pointed out that, first of all these notices, both under Section 148 as well as the recent notice under Section 147 had been issued by the Revenue only in the name of the original assessee, who is a dead person. Despite the fact the original assessee is no more as he died on 15.07.2018 and despite the fact that the same has been brought to the notice of the Revenue, such proceedings including notices have been issued by the Revenue in the name of the dead person. Therefore, against a dead person it cannot be further proceeded.

11. That apart, the learned counsel for the petitioner would canvass the point that, now the reason stated in the communication dated 14.09.2021 by the Revenue is that, when a search was carried out in GFL Financials India Pvt. Ltd, during investigation an information revealed that the assessee was one of the beneficiary in the share transaction to the tune of Rs.26,80,151/- with the said GFC Financials India Pvt Ltd., However, the assessee had filed the return of income for Assessment Year 2013-14 on 31.07.2013 admitting a total income of Rs.5,15,030/- and in this regard, the computation made by the Assessee, it is computed as long term capital loss at Rs.71,388/- by selling the shares at Rs.28,99,951/- and indexed cost of acquisition of Rs.29,71,339/-.

12. Since the claim of long term capital loss is not conclusively proved, the sale consideration of Rs.28,99,951/- is to be brought to tax net. Thus the assessee has not truly and fully disclosed all materials in the return of income and the assessing officer has stated that, he has reasons to believe

that the said amount is to be treated as undisclosed income of the assessee and that is the reason why the Revenue wanted to reopen the assessment under Section 147.

13. The learned counsel for the petitioner would contend that, the very same reason had been given in the earlier occasion when it was reopened under Section 147, which in fact concluded in the assessment order dated 27.06.2017, where the return with a disclosed income to the extent of Rs.5,16,710/- was accepted.

14. When that being so, the very same reason since has been given once again for reopening the assessment under Section 147 proceedings, that is impermissible in view of the legal position settled in this regard. Therefore, for the very same reason once again the Revenue cannot reopen the assessment under Section 147 on the alleged reason that there has been no full and true disclosure of all the materials and in that regard, the Revenue to make a statement that there was a reason to believe that there has been an escape of assessment. Therefore, on this ground, the learned counsel for the petitioner seeks the indulgence of this Court to set aside the orders impugned.

15. However, Mrs.Hema Muralikrishnan, learned Senior Standing Counsel appearing for the respondent would contend that, nowhere any material has been filed before this Court that the very same reason had been given in the earlier occasion also when it was reopened under Section 147, which culminated in the assessment order dated 27.06.2017. When that being so, such a ground cannot be taken without any supporting documents or materials. The learned Standing Counsel would further submit that, insofar as the notice issued to the original assessee who is no more is concerned, the said fact has not been brought to the notice of the Revenue and in fact when Section 148 was issued in the name of the original assessee pursuant to which when return was filed, where, even though it has been mentioned that it is verified by the present petitioner, who is the son of the original assessee, in the column “in the capacity of”, the petitioner has not filled anything and it has been left blank.

16. Learned Standing Counsel also pointed out that, in the letter dated 09.09.2021, where the petitioner had sought for the reasons for reopening the assessment under Section 147 also, nowhere it was stated specifically that the original assessee ie., the father of the petitioner is no more. In fact the said

letter has been issued in the name of the original assessee represented by the petitioner, as if that the petitioner has the power of attorney of the original assessee.

17. Therefore, the assessing officer had no occasion to have a knowledge about the death of the original assessee. But anyhow, it is brought to the notice of the assessing authority by the petitioner that the original assessee is no more, in the subsequent proceedings, the assessing authority would take care of this issue. Therefore, that cannot be fatal to this issue as of now, she contended.

18. I have considered the submissions made by the learned counsel for either side and have perused the materials placed on record.

19. Insofar as the notice in the name of the original assessee who is no more is concerned, the contention raised by the learned Standing Counsel for the Revenue has to be accepted because, in none of these communications that have been mentioned herein above dated 09.09.2021 or prior to which ie., in the return submitted pursuant to Section 148 notice, it has been clearly mentioned that the original assessee is no more and therefore the petitioner has stepped into the shoes of the original assessee.

20. Insofar as the other reason cited by the petitioner's counsel that the reason now given through the communication of the Revenue dated 14.09.2021 as the reason for reopening under Section 147 had already been stated in the earlier occasion also when the similar Section 147 reopening was made and therefore, the very same reason cannot be stated now is concerned, this Court feels that, whether the same reason had been given by the Revenue in the earlier occasion or not cannot be decided now because no document to that effect has been filed by the petitioner, for which the petitioner's counsel expressed the inability of the petitioner because, this all happened during the lifetime of the original assessee ie., the father of the petitioner.

21. Be that as it may. Now the said plea is raised. It is a valid plea to be considered by the Revenue and in this regard, the assessing authority can very well compare the reasons given by the Revenue for reopening the assessment under Section 147 of the Act on the earlier occasion, which ended in the assessment order dated 27.06.2017, where the return of income filed disclosing an income of Rs.5,16,710/- was accepted and if it is

so, accordingly, whether the further reopening can be made or not, has to be decided by the assessing authority. If there was a different reason given in the earlier occasion, what was the reason given in the earlier occasion, that is no way connected with the present reason, that can also be informed by an interim communication in writing by the assessing authority to the petitioner and thereafter, the assessing authority can proceed.

22. In that view of the matter, this Court is inclined to dispose of this writ petition with the following order.

- That the assessing authority shall give an opportunity to the petitioner to put forth his case, pursuant to the Section 148 notice by giving a date for personal hearing and on that date, the petitioner, without default, shall appear before the assessing authority and file the reply as well as supporting documents.

- Thereafter, the assessing authority shall verify whether the same reason presently given in the communication dated 14.09.2021 was the reason given by the Revenue in the earlier occasion under Section 147 of the Act, which ended in the assessment order dated 27.06.2017.

- After comparing the same, if the assessing authority found that the very same reason was given, this Court feels that, the very same reason cannot once again be provided to reopen the assessment under Section 147 of the Act.

- Instead, if different reason was given on the earlier occasion, that reason can be revealed by the assessing authority to the petitioner in writing and thereafter can proceed to finalize the Section 147 proceedings in accordance with law.

23. With the above observations and directions, this writ petition is disposed of by remitting the matter to the assessing authority to do the needful as indicated above. No costs. Consequently, connected miscellaneous petitions are closed.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

KST

To

The Income Tax Officer,
Non Corporate Wad-7(1), Che
No.121, Mahatma Gandhi Road,
Chennai – 600 034.

+1cc to M/s.Hema Muralikrishnan, Advocate Sr.11125

W.P.No. 2980 of 2022

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srg 13/04/2022