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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.04.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.8356 of 2022
and
W.M.P.Nos.8325 & 8326 of 2022

Rajesh Gupta

... Petitioner

-Vs-

1. The Additional/Joint/Deputy/Assistant
Commissioner of Income Tax Income Tax Officer,
National Faceless Assessment Centre,
Delhi.
2. The Assistant Commissioner of Income Tax
Non Corporate Circle-12(1) CHE
BSNL Tower, No.16, Greaves Road,
Chennai-600 006.

... Respondents

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 1st respondent in Assessment Oder in PAN: AAZPG3706E, DIN. ITBA/AST/S/147/2021-22/1039958965 (1) u/s.147 r.w.s.144B of Income Tax Act for AY 2011-12 dated 21.02.2022 as illegal, barred by limitation, contrary to provisions of the Act, principles laid down by the Apex Court.

For Petitioner : Mr.T.Pramod Kumar Chopda

For Respondents : Mr.D.Prabhu Mukunth Arunkumar,
Junior 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 1st respondent in Assessment Oder in PAN: AAZPG3706E, DIN. ITBA/AST/S/147/2021-22/1039958965(1) u/s.147 r.w.s.144B of Income Tax Act for AY 2011-12 dated 21.02.2022.

2. The petitioner is an assessee under the respondent. For the Assessment Year 2011-12, in order to reopen the assessment under Section 147 of the Income Tax Act, 1961 (In short 'the



3. Challenging the said notice under Section 148 of the Act on the ground of limitation that it is beyond the limitation contemplated under Section 149 of the Act, the petitioner challenged the said notice issued under Section 148 of the Act by filing a Writ Petition in W.P.No.13431 of 2018.

5. The learned Judge, while passing orders in the said Writ Petitions, including the one filed by the petitioner challenging Section 148 notice, has held that the limitation for the purpose of Section 149, is only the issuance of notice, therefore when a notice is issued by signing the same by the competent authority that is sufficient that the action was initiated as contemplated within the limitation under Section 149 of the Act. The learned Judge has further held that, thereafter, the delivery or receipt of the order or notice is irrelevant as far as the requirement contemplated under the particular provisions of the Act.

7. Challenging the said assessment order, the petitioner has filed the present Writ Petition assailing the same on the main ground that the assessment order dated 21.02.2022 is beyond the limitation prescribed under Section 153(2) of the Act.

<https://hcservices.ecourts.gov.in/hcservices/>



9. He would also submit that, the said Writ Petition challenging Section 148 notice was filed on 04.06.2018, where interim order of stay was granted on 06.06.2018 and the said Writ Petition was disposed of as stated supra only on 26.04.2021. Therefore, since during the said period from 06.06.2018 to 26.04.2021, there was a stay granted by this Court, the entire period has to be excluded. Therefore, the calculation of nine months limitation shall be made accordingly.

10. Elaborating further, the learned counsel would contend that, since, limitation starts from 01.04.2018 upto 05.06.2018 since there was no stay, that period can be calculated as part of the limitation exhausted. Once the stay was vacated and Writ Petition was dismissed on 26.04.2021, again the remainder of the limitation of nine months starts from 27.04.2021.

11. In this regard, the earlier period from 01.04.2018 to 05.06.2018, according to him was 66 days, the total period of limitation was 270 days therefore 270 - 66 the remainder is 204 days, if these 204 days were taken into account from 27.04.2021 that would end on 20.11.2021 i.e., on or before 20.11.2021, the assessment under Section 147 of the Act should have been completed and assessment order should have been passed.

12. However, the present assessment order which is impugned herein has been passed only in the year 2022, nearly after three months period of limitation and thus it is barred of limitation, therefore, on that ground, the learned counsel would contend that, the petitioner has challenged the impugned order of assessment in this Writ Petition. Hence, he seeks the indulgence of this Court.

13. However, Mr.D.Prabhu Mukunth Arunkumar, learned Junior Standing Counsel appearing for the respondents has pointed out that, no doubt, there was limitation of nine months period, within which the assessment should have been completed, however, the calculation given by the petitioner side that the limitation was over by 20.11.2021 is not correct. He further submits that, the nine months limitation shall start under Section 153(2) of the Act only from the last date of the financial year, where the notice under Section 148 was served on the assessee. Here, admittedly, the notice under Section 148 was served on the petitioner assessee on 03.04.2018. When that being so, the said date 03.04.2018 i.e., serving date on the assessee falls in the financial year 2018-19, if that being so, the last date of financial year 2018-19 would be 31.03.2019, therefore the limitation would start only from 01.04.2019. If that being so, very well within the limitation of nine months period, as contemplated under Section 153(2) of the Act, since the assessment having been completed, and the assessment order was



issued which is impugned herein within that nine months period the same is to be sustained and it cannot be assailed successfully on the alleged ground of violation of the limitation or barred by limitation. Hence, the learned standing counsel would submit that this Writ Petition is liable to be rejected.

14. I have considered the rival submissions made by the learned counsel appearing for both sides and have given my anxious consideration to the legal point raised by both sides.

15. The limitation prescribed for completing the assessment under Section 147 is at Section 153(2) of the Act, which reads thus,

"No order of assessment, re-assessment or re-computation shall be made under Section 147 after the expiry of 9 months from the end of the financial year in which the notice under Section 148 was served (emphasis supplied)."

16. If we compare this with the limitation of Section 149 of the Act, the language used in Section 149 reads thus,

"No notice under Section 148 shall be issued for the relevant assessment year if four years have elapsed from the end of the relevant assessment year unless the case falls under Clause (b) or Clause (c)."

17. If we put the two limitation provisions in juxtaposition for consideration and interpretation, it is to be noted that the language used in Section 149(1) of the Act is that, no notice under Section 148 shall be "issued".

18. Whereas, in Section 153(2), the language used is, after the expiry of nine months from the end of the financial year in which notice under Section 148 was "served".

19. The dichotomy employed by the legislature in these two provisions for calculating the limitation viz., one is for issuance of notice under Section 148 and another is completion of assessment under Section 147 where the wisdom of the legislature has been cautiously used.

20. The word 'issued' is occurred in Section 149(1), whereas the word 'served' is occurred in Section 153(2).

21. In fact, before the learned Judge where the Section 148



notice was under challenge, it was the argument on behalf of the assesseees that the word "issued" means, that the notice served or received by the assessee and not 'generated' or 'despatched' or 'sent' by the Revenue alone.

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22. However, this argument having been considered, was rejected by the learned Single Judge in the said order dated 26.04.2021 in the matter of "Sadhna Tolasariya and Others -Vs- The Income Tax Officer, Corporate Ward-12, Chennai-6 and Others" dated 26.04.2021 made in W.P.Nos.13425 of 2018 etc., In the said judgment, the learned Judge has held as follows,

"19. Section 149 of the Act denotes 'no notice under Section 148 shall be issued for the relevant assessment year if four years have lapsed, which reads as under:-

"149. Time limit for notice: (1) No notice under section 148 shall be issued for the relevant assessment year,- (a) if four years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b) or clause (c); (b) if four years, but not more than six years, have elapsed from the end of the relevant assessment year unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to one lakh rupees or more for that year; (c) if four years, but not more than sixteen years, have elapsed from the end of the relevant assessment year unless the income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment. Explanation.-In determining income chargeable to tax which has escaped assessment for the purposes of this sub-section, the provisions of Explanation 2 of section 147 shall apply as they apply for the purposes of that section. (2) The provisions of sub-section (1) as to the issue of notice shall be subject to the provisions of section 151. (3) If the person on whom a notice under section 148 is to be served is a person treated as the agent of a non-resident under section 163 and the assessment, reassessment or recomputation to be made in pursuance of the notice is to be made



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on him as the agent of such non-resident, the notice shall not be issued after the expiry of a period of six years from the end of the relevant assessment year. Explanation.—For the removal of doubts, it is hereby clarified that the provisions of sub-sections (1) and (3), as amended by the Finance Act, 2012, shall also be applicable for any assessment year beginning on or before the 1st day of April, 2012.”

20. Section 149 of the Act unambiguously stipulates that a notice is to be issued before four years from the end of the relevant assessment year. In certain cases beyond four years and within six years. Therefore, two circumstances are elaborated in the provisions. In certain cases, notices can be issued within four years and in certain other cases, notices can be issued beyond four years but within six years.

21. The period of four years and six years as contemplated are enumerated under the provisions of the Act. However, the point to be considered is, whether the issuance of notice dispatched and the delivery of notice to the assessee, which is to be taken into consideration for the purpose of determining the period of limitation.

22. Section 149 of the Act contemplates that no notice under Section 148 shall be issued. Thus, it categorically enumerates the issuance of notice by the Competent Authority to the assessee, within a period of four years and six years, as the case may be. Thus, the language employed indicates “issuance of notice”.

23. 'Issuance of Notice' means, the order of notice is signed by the Competent Authority. Once the order of notice is signed by the Competent Authority, that is sufficient that the actions are initiated. Thereafter, delivery or receipt of the order is irrelevant as far as the requirements contemplated under the provisions of the Income Tax Act is concerned. Thus, for the purpose of issuance of notice under Section 149 of the Income Tax Act, it is sufficient to establish that if such an order/notice is signed by the Authority Competent and if this fact is established, then it is to be construed that the



provisions of the Act are complied with."

23. The learned Judge has made a clear distinction between issuing of notice and delivery of notice or receipt of notice. Especially in Para 23 of the judgment referred to above, the learned Judge has stated that, issuance of notice means the order or notice is signed by the competent authority and once the order or notice is signed by the competent authority that is sufficient that the actions are initiated. There may not be a different interpretation for the word 'issuance'. However, the learned Judge has further stated that, thereafter delivery or receipt of the notice is irrelevant as far as the requirement contemplated under the provisions of the Act, that means Section 149 of the Act.

24. However in the present case, the limitation started from the last date of financial year during which the notice under Section 148 was served on the assessee. The word 'served' has been predominantly and unambiguously used by the legislature, that means, the limitation starts only from the last date of the financial year, wherein the notice was served on the assessee and not from the notice was 'issued' or 'sent' by the Revenue.

25. In the case in hand, admittedly the notice dated 30.03.2018 has been served on the assessee only on 03.04.2018. If that being so, 03.04.2018 is the date of serving of notice. Therefore, if that date falls in a particular financial year, the limitation starts only after the last date of that financial year. Here in the case in hand, since the notice was served on 03.04.2018, since that falls in the financial year 2018-19, the last date of the financial year being 31.03.2019, the limitation of nine months as contemplated under Section 153 (2) of the Act would necessarily start only from 01.04.2019 and not from 01.04.2018 as projected by the learned counsel for the assessee.

26. In this context, the submission made by the learned Standing Counsel for the Revenue is to be accepted.

27. If that being the factual position, certainly the order impugned dated 21.02.2022 passed under Section 147 of the Act is well within the limitation of nine months period and therefore it cannot be stated that it is beyond the period of limitation and hence on that ground it can be assailed before this Court invoking the extraordinary jurisdiction.

28. Hence, this Court has no hesitation to hold that the ground raised by the petitioner on the basis of limitation as contemplated under Section 153(2) of the Act is to be answered



in favour of the Revenue and against the assessee.

29. Thus, this Court is inclined to pass the following order in this writ petition.

- The impugned order cannot be assailed successfully on the ground of limitation within the meaning of Section 153(2) of the Act. Hence, the challenge fails and the writ petition is liable to be rejected. Accordingly, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.
- However, the dismissal of this writ petition shall not stand in the way of the petitioner assessee to prefer an appeal against the assessment order in the manner known to law especially under the provisions of the Act.

Sd/-

Assistant Registrar(CS-IV)

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Sub Assistant Registrar

KST

To

1. The Additional/Joint/Deputy/Assistant Commissioner of Income Tax Income Tax Officer, National Faceless Assessment Centre, Delhi.
2. The Assistant Commissioner of Income Tax Non Corporate Circle-12(1) CHE BSNL Tower, No.16, Greaves Road, Chennai-600 006.

+1cc to Ms.Hema Muralikrishnan, Advocate, S.R.No.23923

+1cc to Mr.Pramod Kumar Chopda, Advocate, S.R.No.24003

W.P.No.8356 of 2022

SR(CO)

SB(23/06/2022)