IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.04.2022

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.8092 of 2022
and
W.M.P.Nos.8069 & 8071 of 2022

Palapur Sundararajan Parthasarathy ...Petitioner

Vs

1. Assistant Commissioner of Income Tax,
Non-Corporate Circle 9(1), Chennai,
Wanaparthy Block,
No.121, Mahatma Gandhi Road,
Nungambakkam, Chennai - 34.

2. National Faceless Assessment Centre,
Delhi rep. by
Additional/Joint/Deputy/Assistant
Commissioner of Income Tax,
Room No.401, 2nd Floor, E-Ramp,
Jawaharlal Nehru Stadium,
Delhi - 110 003. ...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the impugned notice under Section 148 dated 26.03.2021 for assessment year 2016-2017 having DIN & Notice No.ITBA/AST/S/148/2020-21/1031805443(1) issued by the first respondent and the consequential proceeding and order 10.03.2022 for assessment year 2016-17 having DIN & Letter No.ITBA/AST/F/17/2021-22/1040572496(1) issued by the second respondent and quash the same as illegal.

For Petitioner : Mr.K.Ravi

For Respondents : Mrs.Hema Muralikrishnan
Senior Standing Counsel

ORDER

The prayer sought for herein is for a Writ of Certiorari to call for the impugned notice under Section 148 dated 26.03.2021 for assessment year 2016-2017 having DIN & Notice

No.ITBA/AST/S/148/2020-21/1031805443(1) issued by the first respondent and the consequential proceeding and order 10.03.2022 for assessment year 2016-17 having DIN & Letter No.ITBA/AST/F/17/2021-22/1040572496(1) issued by the second respondent and quash the same as illegal.

2. The petitioner is the assessee under the respondents. In respect of the assessment year 2016-2017, for reopening the assessment under Section 147 of the Income Tax Act, 1961 [in short, 'the Act'], notice under Section 148 of the Act was issued on 26.03.2021.

3. Pursuant to which, after filing return, reasons were asked for by the assessee and after supplying the reasons by the Revenue, they called for objections, for which the assessee has made. The objections raised by the petitioner in reopening and the reasons for reopening having been considered which was disposed by the order of the Revenue dated 10.03.2022. Challenging this order, the present writ petition has been filed.

4. When the writ petition is taken up for admission, Ms.Hema Muralikrishnan, learned senior standing counsel for the Revenue, on instructions, would submit that already the assessment order has been passed.

5.When that being the position, this Court is of the view that as against the assessment order, the petitioner can be relegated before the Appellate Authority to challenge the same by way of appeal.

6.However, learned counsel for the petitioner wanted to submit that the reasons stated for reopening the assessment under Section 147 of the Act were already available at the time of earlier assessment. Therefore, it is not a new phenomena which has been brought to the notice of the Revenue for coming to the conclusion that there has been an escaped assessment. Therefore, in this case, there is no jurisdiction for the assessing authority to invoke Section 147 of the Act.

7. Be that as it may, this issue can also be raised as a preliminary issue with regard to reopening under Section 147 of the Act before the Appellate Authority at the time of filing such appeal. If such a preliminary issue is raised, the same shall be decided by the Appellate Authority as a preliminary issue before going into the merits of the assessment order.

8.In that view of the matter, this Court is inclined to dispose of the writ petition with the following orders:

> That the petitioner is hereby relegated to go before the Appellate Authority to challenge the assessment order passed in this matter pursuant to the impugned communication herein and when such an appeal is filed, it is open to the petitioner to raise the

jurisdiction point of the assessing authority to reopen under Section 147 of the Act as a preliminary issue and if such a preliminary issue is raised, the same shall be decided as such by the Appellate Authority after giving an opportunity of being heard to the petitioner/assessee.

9. With these observations and directions, by relegating the petitioner to go before the Appellate Authority, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mmi/sp

To

1. The Assistant Commissioner of Income Tax,
Non-Corporate Circle - 9(1), Chennai,
Wanaparthy Block,
No.121, Mahatma Gandhi Road,
Nungambakkam, Chennai - 34.

2. The Additional/Joint/Deputy/Assistant
Commissioner of Income Tax,
National Faceless Assessment Centre
Room No.401, 2nd Floor, E-Ramp,
Jawaharlal Nehru Stadium,
Delhi - 110 003.

+1cc to Mr.K.Ravi, Advocate, S.R.No.22304

+1cc to M/s.HemaMuralikrishnan, Senior Standing Counsel,
S.R.No.22495

W.P.No.8092 of 2022

PL(CO)
RGA(21/06/2022)