IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.04.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.9315 of 2022
and W.M.P.No.9073 of 2022

M.Parkunan …. Petitioner

-Vs-

Income Tax Officer
Ward 2 Pondicherry
Office of the Income Tax Officer Ward-02
No.380, 2nd Floor, Kanniah Business Centre
Pondicherry – 605 001. …. Respondent

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the impugned proceedings of the respondent in P.A.No.BBYPP4498K dated 26.12.2018 for the assessment year 2011-2012 and the impugned consequential Notice of demand issued for the assessment year 2011-2012 in PAN BBYPP4498K dated 26.12.2018 and quash both the proceedings as barred by limitation and also passed without issuing any notice to the petitioner and granting an opportunity as contemplated under the provisions of the Income Tax Act 1961.

For Petitioner : Mr.P.Rajkumar

For Respondents: Mr.A.N.R.Jayapratap,
Junior Standing Counsel

O R D E R

The prayer sought for herein is for a Writ of Certiorari to call for the impugned proceedings of the respondent in P.A.No.BBYPP4498K dated 26.12.2018 for the assessment year 2011-2012 and the impugned consequential Notice of demand issued for the assessment year 2011-2012 in PAN BBYPP4498K dated 26.12.2018 and quash both the proceedings as barred by limitation and also passed without issuing any notice to the petitioner and granting an opportunity as contemplated under the provisions of the Income Tax Act 1961.

2. The petitioner is an assessee under the Income Tax Act, 1961 (In short 'the Act'). In respect of the assessment year 2011-12, in order to reopen the assessment under Section 147 of the Act, a notice under Section 148 of the Act was issued on 20.03.2018. The said notice has been sent to the address given by the petitioner at D.No.208, 1st Floor, Opp.to Hotel GRT Sunway, 100 Feet Road, Pondicherry-4. However, the same was returned unserved with the postal endorsement 'addressee not known'.

3. Therefore, the Revenue again sent a notice dated 25.10.2018 to his address at Mettu Street, Thattankuttai, Thippasamuthram Village, Villupuram as appearing in ITS details which also has been returned with the postal endorsement 'no such addressee'. Thereafter, the Revenue proceeded to finalize the assessment and assessment order dated 26.12.2018 has been passed. Challenging the said assessment order this writ petition has been filed.

4. Heard Mr.P.Rajkumar, learned counsel for the petitioner, who pointed out that the notice dated 20.03.2018 has been sent to the address, which according to him is a wrong address of the assessee, as the petitioner had vacated that address long back and had given a new address at Villupuram at the time of filing the earlier returns. In the said address, the petitioner was continuously residing, notice has not been served on the petitioner assessee at Villupuram also. Therefore, according to him there was no notice served on the petitioner and therefore the assessment could not have been proceeded and the Revenue could not have passed the impugned order dated 26.12.2018.

5. That apart the learned counsel would point out that, even though the first notice dated 20.03.2018 was within the limitation period, it was sent to a wrong address. Subsequently, the notice dated 25.10.2018 was beyond the limitation period. Therefore on that ground of limitation also, the assessment made under Section 147 of the Act is vitiated. At any rate, the present impugned order ie., the assessment order under Section 147 read with Section 144 of the Act dated 26.12.2018 is infirm and therefore on that ground the impugned order is to be set aside, he contended.

6. However, Mr.A.N.R.Jayapratap, learned Junior Standing Counsel appearing for the respondent Revenue submitted that, the address given by the petitioner was a correct address. Therefore, the earlier notice which was sent to Pondicherry address since has been returned as there was no such addressee, the notice was again sent to Villupuram address, which address was obtained from the Bank viz., Pallavan Grama Bank, Omandur where the statement of details had been called for by the

Revenue under Section 133(6) of the Act, where it has also been revealed that in the petitioner's account at the bank, a cash deposit totaling to Rs.57,90,271/- was made. Despite this huge sum of cash deposit having been made in the bank account of the petitioner assessee during the relevant year ie., assessment year 2011-12, no return has been submitted or filed by the petitioner assessee. Therefore, it is a clear suppression and the petitioner assessee has not truly and fully disclosed the income. Therefore, it necessitated the Revenue to invoke Section 147 of the Act by invoking the provisions of Section 148. Hence, the impugned assessment order dated 26.12.2018 is to be sustained, he contended.

7. Learned Standing Counsel for the Revenue would also point out that, as against the assessment order though appeal remedy is very much available, no such appeal has been filed by the assessee and here also this writ petition has been filed only after four years of the assessment order dated 26.12.2018. Therefore, on the ground of laches also this writ petition is liable to be rejected, he contended.

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

9. First of all, the notice dated 20.03.2018 sent to the Pondicherry address has been returned as there was no such addressee and therefore the second notice was sent to the Villupuram address. Insofar as the Villupuram address is concerned, it is an admitted fact that the petitioner was residing in the Villupuram address alone. When such being the position, there could not have been a chance for the postal authorities to report that there is no such addressee in that address.

10. Therefore, in this context this Court taking judicial notice that the petitioner assessee might have managed to send back the notice sent by the Revenue to the Villupuram address of the assessee by making a postal endorsement that no such addressee is available in the said address despite the fact that the petitioner assessee continued to reside in the said address.

11. Moreover it is also to be noted that, though the petitioner received the cash deposit of Rs.57,90,271/- during the previous year relevant to the assessment year 2011-12, no return has been filed under Section 139 of the Act and for non-filing of the return, no plausible reason has been given by the petitioner.

12. These factors would coherently go to show that, the petitioner willfully suppressed and did not fully and truly disclose the tax liability of the petitioner. Therefore, it comes under the fourth category of the proviso to Section 147. Therefore, the limitation could be extended and hence the assessment order dated 26.12.2018 which is impugned herein passed by the Revenue cannot be assailed successfully on the said ground of limitation as well as notice not served on the petitioner assessee.

13. Moreover, as stated by the learned Standing Counsel appearing for the Revenue the impugned order is dated 26.12.2018 and the writ petition has been filed only in 2022. There is no plausible reason as to the delay in filing the writ petition. Therefore, on the ground of laches also this writ petition is liable to be rejected. If at all the petitioner has got any grievance on the merits of the impugned order dated 26.12.2018, the petitioner assessee can very well prefer an appeal before the Commissioner (Appeals), which attempt the petitioner assessee has not made. Therefore, on that ground also the writ petition is liable to be rejected.

14. Therefore, for all the above reasons this writ petition is to be rejected. Accordingly, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(CS-II)

//True copy//

Sub Assistant Registrar

KST

To

Income Tax Officer
Ward 2 Pondicherry
Office of the Income Tax Officer Ward-02
No.380, 2nd Floor, Kanniah Business Centre,
Pondicherry – 605 001.

+1cc to Mr.P.Rajkumar, Advocate SR.No.26287
+1cc to Mr.A.P.Srinivas, Advocate SR.No.26620

W.P.No. 9315 of 2022

SKM(CO)
GMY(01/07/2022)