IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2022

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THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.10588 of 2022
and
W.M.P.Nos.10248 & 10249 of 2022

Udayamohan Raman ... Petitioner

Vs

1.Additional / Joint/ Deputy/ Assistant
Commissioner of Income Tax /
Income Tax Officer,
National Faceless Assessment Centre, Delhi.

2.The Income Tax Officer,
Non-Corporate Ward-9(1),
121, Nungambakkam High Road,
Chennai. .. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the records on the file of the respondents and quash the impugned order passed by the first respondent in PAN:AAWPU1430A, DIN-ITBA/AST/S/147/2021-22/1042235156(1) dated 31.03.2022 under Section 147 read with Section 144 read with Section 144B of the Act for the Assessment Year ('AY') 2016-17.

For Petitioner : Mr.N.V.Balaji

For Respondents : Mrs.Hema Murali Krishnan
Senior Standing Counsel

ORDER

The prayer sought for herein is for a writ of certiorari calling for the records on the file of the respondents and quash the impugned order passed by the first respondent in PAN:AAWPU1430A, DIN-ITBA/AST/S/147/2021-22/1042235156(1) dated 31.03.2022 under Section 147 read with Section 144 read with Section 144B of the Act for the Assessment Year ('AY') 2016-17.

2. In respect of the assessment year 2016-17, in order to reopen the assessment under Section 147 of the Income Tax Act, 1961 (in short 'the Act'), notice under Section 148 was issued by the Revenue. Subsequently, a notice under Section 142(1) was also issued. Pursuant to which, in response to the said notice issued under Section 143(2) read with Section 147 of the Act dated 14.11.2021, where the only query raised by the Revenue was that, there was a sale transaction during the relevant financial year i.e., 2015-16 relates to Assessment Year 2016-17 to the tune of Rs.1,40,00,000/- which has not been brought in the Books of Accounts of the petitioner for filing return for the said assessment year, therefore, it was an escaped assessment, the petitioner had given the following reply on 26.11.2021:

"I have not sold any Property for Rs.1,40,00,000/- during the Financial Year 2015-16 relevant to Assessment Year 2016-17.

But during the Financial Year 2013-14, I have sold my share in the ancestral House Property along with my 5 other relatives having shares, on 15.07.2013 for Rs.1,40,00,000/- vide Document No:2834 of 2013. I, R.Udaya Mohan, is the 5th Vendor of total 6 Vendors as per the above sale document. My share of consideration in the Sale of Property is only Rs.16,50,000/- as per above sale deed vide page No.12 (Document page No.15 of Total page 34). I am enclosing the scanned copy of the Document No: 2834 of 2013 for your kind perusal.

I have filed my Return of Income for the AY 2014-15 on 31.03.2016 vide ASK Acknowledgement No: 001310316111689 showing the Long-Term Capital Gain and Claiming exemption under section 54 by purchasing of Flat at Shoba City, Bangalore within one year.

I am also enclosing the scanned copies of the following documents for your kind consideration.

1. *ITR-V for the Assessment Year 2014-15,*
2. *Computation of Total Income for the AY 2014-15,*
3. *Calling of Details Letter dt 08.10.2018 for the AY 2014-15 by the ITO, Non crop. Ward 9(5),*
4. *My Reply filed for the above letter Vide Ack.No:169751810045 dt 23.10.2018, to ITO 9(5), and*
5. *Letter dt 15.11.2018 with additional details submitted, received by Mrs.S.Vaidehi, ITO, Non-*

Corproate Ward 9(5), Chennai.

I have not entered any transaction during the Financial year 2015-16 relevant to the AY 2016-17 for sale of Property for Rs.1,40,00,000/-. The information in IBTA/INSIGHT is Wrong.

So kindly drop the proceedings for the Notice issued on 14.11.2021, under section 143(2) read with section 147 of the Income Tax Act, 1961."

3. Along with the said reply, the copy of the sale deed dated 15th July 2013 also was produced by the petitioner assessee and this reply submitted by the petitioner was received and acknowledged by the Revenue and in this regard, the e-proceedings response acknowledgment given by the Revenue has also been produced before this Court.

4. Despite these factors, the assessment order has been now passed on 31.03.2022 which is impugned herein, wherein the Revenue has stated that, in response to the notice under Section 142(1) of the Act, the assessee has not filed a reply. Therefore, the alleged income of Rs.1,40,00,000/- from out of the sale transaction of an immovable property of the petitioner during the relevant financial year was considered as an escaped assessment. Therefore, confirming the said

proposal, this assessment order has been passed on 31.03.2022.

5. Mr.N.V.Balaji, learned counsel appearing for the petitioner would submit that, the petitioner has never involved in any sale transaction of immovable property to the tune of Rs.1,40,00,000/- in the financial year 2015-16 which is relevant to the Assessment Year 2016-17, for which the assessment was reopened by the Revenue under Section 147 of the Act.

6. Moreover, when notice was issued by the Revenue under Section 143(2) as well as Section 142(1), reply had been given giving details as to the sale transaction taken place during the Assessment Year 2013-14 and along with the same, the copy of the sale deed also was annexed and this reply with annexures having been received by the Revenue, they issued the e-governance acknowledgment, which has also been filed before this Court. Therefore, it makes it clear that, there was a strong reply to the notice issued by the Revenue, where it was made clear that, no such transaction of immovable property take place during the relevant financial year 2015-16, in fact, it was taken two years before. Therefore, the question of bringing the said income in the name of the petitioner in the Assessment Year 2016-17 does not arise. Hence, the proceedings initiated

under Section 147 read with Section 148 should be dropped. Despite this clear reply, now the impugned order says that, as if that the petitioner has not filed any reply and therefore, they proceeded to confirm the proposal already given.

7. Hence, the learned counsel seeks indulgence of this Court against the impugned order.

8. Heard Mrs.Hema Murali Krishnan, learned Senior Standing Counsel appearing for the Revenue who would submit that, insofar as the notice issued under Section 148 of the Act is concerned, as per ***GKN Driveshafts (India) Limited Vs. Income Tax Officer and others*** reported in ***(2003) 259 ITR 19 (SC),*** no return was filed and no response was asked for specifically as to the reasons for reopening under Section 147 of the Act. Therefore, only pursuant to the queries raised by the Revenue by issuing notice under Section 143(2) and 142(1) of the Act alone since the assessee claimed to have replied, that reply would be taken into account and in this regard, a revised order of assessment would be passed by taking into account the reply submitted by the petitioner, hence, to that extent, this writ petition can be disposed of, she contended.

9. I have considered the said submissions made by the learned counsel appearing for both sides and have perused the materials placed before this Court.

10. As has been pointed out herein above, on 26.11.2021 the reply had already been given by the petitioner, where he has clearly stated that, there was no transaction relating to the financial year 2015-16 corresponding to Assessment Year 2016-17 and the sale deed in this regard dated 15th July 2013 also has been filed along with the reply which relates to the financial year 2013-14 corresponding to the Assessment Year 2014-15. Therefore, in respect of the Assessment Year 2016-17 corresponding to financial year 2015-16, no transaction, according to the petitioner, has been taken place and when this definite reply has been received and acknowledged by the Revenue, on what basis the Assessing Authority passed order stating that, no reply was given by the petitioner assessee is not known.

11. Therefore, on the said reason itself, this Court has no hesitation

to hold that, it is clear violation of principles of natural justice as without considering the reply given by the petitioner since the impugned order was passed, it is liable to be interfered with.

12. In that view of the matter, this Court is inclined to dispose of this Writ Petition with the following orders:

> That the impugned order is set aside and the matter is remitted back to the respondents for reconsideration. While reconsidering the same, the Revenue shall take into account the reply submitted by the petitioner dated 26.11.2021 along with the annexures like earlier ITR and the sale deed dated 15th July 2013 and if any further input is required by the Revenue, that can also be supplied by the petitioner if it is available and after giving an opportunity of being heard to the petitioner assessee, further orders of assessment if need arises can be passed by the respondent Revenue thereafter.

13. With these directions, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

27.04.2022

Index : Yes / No
Speaking Order : Yes / No

Sgl

To

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R. SURESH KUMAR, J.

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