BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **29.03.2022**
CORAM:
THE HONOURABLE MR.JUSTICE **C.SARAVANAN**
W.P.(MD) No.2826 of 2022
and
W.M.P.(MD) Nos.2480 and 2481 of 2022

AM.Xavier ... Petitioner

/vs./

1.The Assistant Commissioner of Income Tax,
Circle -I, Karaikudi,
Sivagangai District.

2.Income Tax Officer,
Ward 1, Karaikudi,
Sivagangai. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records relating to impugned notices and quash the impugned notice dated 31.03.2021 in ITBA/AST/S/148/2020-21/1032031421 (1) and consequential impugned notice dated 23.06.2021 in ITBA/AST/F/143 (2)-4/2021-22/1033643281 (1) and 29.11.2021 in ITBA/AST/F/17/2021-22/1037341340 (1) issued by the respondents for Assessment year 2014 -2015 under section 148 and 147 of Income Tax Act.

For Petitioner : M/s.M.Rajeswari
For Respondents : Mr.N.Dilip Kumar
Senior Standing Counsel

ORDER

The petitioner has challenged the impugned notices dated 31.03.2021, 23.06.2021 and 29.11.2021 seeking to reopen the assessment for the assessment year 2014-15.

2.It is the specific case of the petitioner that a scrutiny assessment order was passed for the petitioner in response to the returns filed on 13.11.2014 and 13.06.2016. It is submitted that at the time of scrutiny assessment under Section 143 (3) of the Income Tax Act, 1961, a specific query was raised by the then Assessing Officer regarding the source for cash deposit in the petitioner's bank account, which was explained to the Assessing Officer and based on the records and scrutiny of the documents, the income returned was enhanced to Rs.5,97,210/- from 4,97,210/- in the returns filed by the petitioner on 13.11.2014.

3.The learned counsel for the petitioner submits that the reasons given for reopening of the assessment vide a communication dated 29.11.2021, wherein it has been stated that it was subsequently noticed that the petitioner had failed to disclose the savings bank account No.62722200023290 at Syndicate Bank and the closing bank balance of Rs.32,47,512/-, were not offered to income and hence, the entire amount of Rs.32,47,512/- was to be treated as undisclosed income under Section 69 of the aforesaid Act is not correct as this was considered before passing the assessment order. It is therefore submitted that the Officer was not justified in coming to a conclusion that there were reasons to conclude that the income chargeable to tax has escaped from the assessment within the meaning of explanation 2(c)(i) of Section 147 of the Income Tax Act, 1961 for the assessment year 2014-15.

4.The learned counsel for the petitioner has placed strong reliance on the decision of this Court in W.P.Nos.954 of 2020 and 35909 of 2019 ***(M/s.Sanmina - SCI Technology India Private Limited Vs. The Assistant Commissioner of Income Tax, Chennai and another)*** dated 12.03.2021. It is submitted that the aforesaid order was upheld by the Division Bench of this Court. It is submitted that the Hon'ble Supreme Court in the case of ***CIT Vs Kelvinator of India*** reported in ***(2010) 2 SCC 723*** has categorically held that reopening of the assessment cannot be initiated based on the change of opinion and therefore the impugned proceeding has to be set aside.

5.Opposing the prayer, the learned Senior Standing Counsel for the respondents submits that the amount in question was disclosed in the profit and loss account of the firm, of which the petitioner is a partner and therefore the income was not taxed in the hands of the firm, of which the petitioner is a partner. Therefore the said income was not subject to tax. Even otherwise, on merits, it is therefore submitted that the impugned order cannot be interfered.

6.It is further submitted that even though the amount was transferred to the petitioner's savings account for business purpose, it was disclosed in the return filed on 13.11.2014. It is therefore submitted that the writ petition is devoid of merits.

7.It is submitted that after the impugned notices dated 31.03.2021, 23.06.2021 and 29.11.2021 were issued, the petitioner also filed a return on 16.04.2021. However, the petitioner did not ask for any reason for reopening of the assessment. Thereafter a notice under Section 143(2) of the Income Tax Act, 1961 was issued on 23.06.2021, calling upon the petitioner to furnish the details by 27.01.2021. It is only on 21.07.2021 the petitioner asked for reasons for the first time, which was furnished by the National Faceless Assessment Centre on 29.11.2021. The petitioner was asked to respond by 06.12.2021 and thereafter, a notice was issued under Section 142 (1) of the said Act on 19.01.2022. The petitioner appears to have given an objection on 25.01.2022 long after the proceedings were initiated.

8.The learned Senior Standing Counsel for the respondents further submits that the petitioner has also replied and thereafter, a draft final assessment order was issued during the pendency of the present writ petition on 27.03.2022. Therefore, it is open for the petitioner to give a detailed reply to the same and submit the jurisdictional Income Tax to the Income Tax Department, National Faceless Assessment Centre.

9.I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents.

10.The dispute pertains to the assessment year 2014-15 (relevant previous year 2013-14). Though the amount of Rs.32,47,512/- appears to have been shown as an asset of the firm in the Profit and Loss account of the firm (M/s.Antony Muthu Udayar and Company), there is no clear explanation as to whether the aforesaid amount was offered as an income by the petitioner. If the amount was transferred to the personal account/savings account of the petitioner at the Syndicate Bank, then the aforesaid amount should have been shown as an expense in the firm’s account. The aforesaid adjustments are required to be reconciled and considered by the Officer.

11.In any event, no prejudice would be caused to the petitioner as the petitioner has now been issued with a draft order and a show cause notice. Considering the same, I am inclined to dispose of this writ petition by directing the petitioner to give a proper reply to the same. The petitioner may file such reply within a period of 30 days from the date of receipt of a copy of this order. On receipt of such reply within such time or at the expiry of such time, which the respondents may give, the respondents shall proceed to pass appropriate orders on merits and in accordance with law, within a period of 3 months therefrom. It is open for the petitioner to ask for a personal hearing through video conference.

12.This writ petition is disposed of, in terms of the above observations. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

1.The Assistant Commissioner of Income Tax,
Circle - 1, Karaikudi,
Sivagangai District.

2.Income Tax Officer,
Ward 1, Karaikudi,
Sivagangai.

+1 CC to M/s.S.M.S.JOHNNY BASHA, Advocate (SR-15124[F] dated 29/03/2022)

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-15143[F] dated 29/03/2022)

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