BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.03.2022

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P(MD).Nos.5228 and 5231 of 2022
and
W.M.P(MD).Nos.4261, 4263, 4254 and 4256 of 2022

W.P.(MD).No.5228 of 2022

Dr.Hariharan Sivaramakrishnan ... Petitioner

Vs.

1.The Assistant Commissioner of Income Tax,
Circle-1
Nellai City Centre,
Tiruchendhur Road,
Rahmath Nagar,
Tirunelveli-627 011.

2.The Joint Commissioner of Income Tax,
Tirunelveli Range,
Nellai City Centre,
Tiruchendhur Road,
Rahmath Nagar,
Tirunelveli-627 011. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records on the file of the first Respondent in PAN No. AFTPS9570F and quash the impugned notice in ITBA/AST/S/148/2021-22/1032628634(1) issued under Section 148 of the Income Tax Act, 1961 dated 23.04.2021 for the Assessment Year 2017-18 by the first Respondent as illegal and without jurisdiction.

For Petitioner : Mrs.Vandana Vyas
For Respondents : Mr.N.Dilip Kumar
Senior Standing Counsel

W.P.(MD).No.5231 of 2022

M/s.Sree Jeyasakthi Saw Mill

Represented by its Managing Director,
Mr.P.Sanjeevkumar ... Petitioner

Vs.

1.The Income Tax Officer,
Ward-4,
Nellai City Centre,
Tiruchendhur Road,
Rahmath Nagar,
Tirunelveli-627 011.

2.The Principal Commissioner of Income Tax,
Madurai-1,
CR BLDG, 2,V P Rathinasamy Nadar Road,
Bibikulam, Madurai-625 021. ...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records on the file of the first Respondent in PAN No.AAUFS6780P and quash the impugned notice in ITBA/AST/S/148/2021-22/1033888783(1) issued under Section 148 of the Income Tax Act, 1961 dated 30.06.2021 for the Assessment Year 2015-16 by the first Respondent as illegal and without jurisdiction.

For Petitioner : Mrs.Vandana Vyas
For Respondents : Mr.N.Dilip Kumar
Senior Standing Counsel

COMMON ORDER

In these writ petitions, both the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents submits that the issue is now no longer in the light of the decision of this Court in batch of writ petitions in the case of **Vellore Institute of Technology Vs Central Board of Direct Tax and others** in W.P.Nos.15019 of 2021 etc. Batch, dated 04.02.2022.

2. The petitioners in these writ petitions have challenged the impugned notice issued on 23.04.2021 and 30.06.2021 in W.P(MD). Nos.5228 and 5231 of 2022 respectively.

3. Both Section 148 and Section 148 (A) of the Income Tax, which has been incorporated into the Income Tax Act with effect from 01.04.2021, reads as under:

> ***148. Issue of notice where income has escaped assessment.*** *Before making the assessment, reassessment or recomputation under section 147, and subject to the provisions of section 148A, the Assessing Officer shall serve on the assessee a notice, along with a copy of the order passed, if required, under clause (d) of section*

148A, requiring him to furnish within such period, as may be specified in such notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139:

***Provided** that no notice under this section shall be issued unless there is information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the relevant assessment year and the Assessing Officer has obtained prior approval of the specified authority to issue such notice. Explanation 1.—For the purposes of this section and section 148A, the information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment means,—*

(i) any information flagged in the case of the assessee for the relevant assessment year in accordance with the risk management strategy formulated by the Board from time to time;

(ii) any final objection raised by the Comptroller and Auditor General of India to the effect that the assessment in the case of the assessee for the relevant assessment year has not been made in accordance with the provisions of this Act.

Explanation 2.—For the purposes of this section, where,—

(i) a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A, on or after the 1st day of April, 2021, in the case of the assessee; or

(ii) a survey is conducted under section 133A, other than under sub-section (2A) or subsection (5) of that section, on or after the 1st day of April, 2021, in the case of the assessee; or

(iii) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner, that any money, bullion, jewellery or other valuable article or thing, seized or requisitioned under section 132 or section 132A in case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or

(iv) the Assessing Officer is satisfied, with the prior approval of Principal Commissioner or Commissioner, that any books of account or documents, seized or requisitioned under section 132 or section 132A in case of any other person on or after the 1st day of April, 2021, pertains or pertain to, or any information contained therein, relate to, the assessee,

the Assessing Officer shall be deemed to have information which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the three assessment years immediately preceding the assessment year relevant to the previous year in which the search is initiated or books of account, other documents or any assets are requisitioned or survey is conducted in the case of the assessee or money, bullion, jewellery or other valuable article or thing or books of account or documents are seized or requisitioned in case of any other person.

Explanation 3.—For the purposes of this section, specified authority means the specified authority referred to in section 151.

148A. Conducting inquiry, providing opportunity before issue of notice under section 148.

The Assessing Officer shall, before issuing any notice under Section 148,-

(a) conduct any enquiry, if required, with the prior approval of specified authority, with respect to the information which suggests that the income chargeable to tax has escaped assessment;

(b) provide an opportunity of being heard to the assessee, with the prior approval of specified authority, by serving upon him a notice to show cause within such time, as may be specified in the notice, being not less than seven days and but not exceeding thirty days from the date on which such notice is issued, or such time, as may be extended by him on the basis of an application in this behalf, as to why a notice under section 148 should not be issued on the basis of information which suggests that

income chargeable to tax has escaped assessment in his case for the relevant assessment year and results of enquiry conducted, if any, as per clause (a);

(c) consider the reply of assessee furnished, if any, in response to the show-cause notice referred to in clause (b);

(d) decide, on the basis of material available on record including reply of the assessee, whether or not it is a fit case to issue a notice under section 148, by passing an order, with the prior approval of specified authority, within one month from the end of the month in which the reply referred to in clause (c) is received by him, or where no such reply is furnished, within one month from the end of the month in which time or extended time allowed to furnish a reply as per clause (b) expires:

Provided *that the provisions of this section shall not apply in a case where,—*

(a) a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A in the case of the assessee on or after the 1st day of April, 2021; or

(b) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any money, bullion, jewellery or other valuable article or thing, seized in a search under section 132 or requisitioned under section 132A, in the case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or (c) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any books of account or documents, seized in a search under section 132 or requisitioned under section 132A, in case of any other person on or after the 1st day of April, 2021, pertains or pertain to, or any information contained therein, relate to, the assessee.

Explanation.—For the purposes of this section, specified authority means the specified authority referred to in section 151.

4. The Hon’ble Division Bench after examining the issues has concluded as under:

"*19. In view of the ratio propounded by the Allahabad and Delhi High Courts on the subject, the reassessment notices under Section 148 of the Act of 1961 served on the petitioners on or after 1.4.2021 are set aside having been issued in reference to the unamended* *provisions and the Explanations are to be read as applicable to reassessment proceedings if initiated on or prior to 31.3.2021, but it would be with liberty to the assessing authorities to initiate reassessment proceedings in accordance with the provisions of the Act of 1961, as amended by the Finance Act, 2021, after making all the compliances as required by law, if limitation for it survives.*

With the aforesaid observations, all the writ petitions are disposed of. There shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed."

5. These writ petitions stand allowed with the above observations in paragraph 19 of the aforesaid case of the Hon'ble First Bench of this Court. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

1.The Assistant Commissioner of Income Tax,
Circle-1
Nellai City Centre,
Tiruchendhur Road,
Rahmath Nagar,
Tirunelveli-627 011.

2.The Joint Commissioner of Income Tax,
Tirunelveli Range,
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3.The Income Tax Officer,
Ward-4,
Nellai City Centre,

Tiruchendhur Road,
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Tirunelveli-627 011.

4.The Principal Commissioner of Income Tax,
Madurai-1,
CR BLDG, 2,V P Rathinasamy Nadar Road,
Bibikulam, Madurai-625 021.

+2 CC to M/s.N.DILIPKUMAR, Advocate (SR-14698,14699[F] dated 25/03/2022)

+2 CC to M/s.M.P.SENTHIL, Advocate (SR-14754,14753[F] dated 28/03/2022)

W.P(MD).Nos.5228 and 5231 of 2022
24.03.2022

RK(13/04/2022) 7P 9C