BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.04.2022

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P(MD).No.9044 of 2022
and
W.M.P(MD).Nos.6497 and 6498 of 2022

Sambathiraj Vijayraj ... Petitioner

Vs.

1.The Income Tax Officer,
Ward 1, Kumbakonam,
No.31, Krishnaswamy Road, Gandhi Nagar,
Kumbakonam, Tamil Nadu-612001.

2.The Principal Chief Commissioner of Income Tax,
No.121, Mahatama Gandhi Road,
Chennai-34. ...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 of the file of the first Respondent and quash the impugned order in ITBA/AST/F/148A/2022-23/1042565142(1) dated 06.04.2022 under Section 148A(d) of the Income Tax Act, 1961 and the consequential Impugned notice dated 06.04.2022 in ITBA/AST/S/148_1/2022-23/1042567717(1) under section 148 of the Act passed by the first Respondent for the Assessment Year 2015-16 as illegal and not in accordance with law.

For Petitioner : Mr.R.Sivaraman
For Respondents : Mr.N.Dilipkumar
Senior Standing Counsel

ORDER

The petitioner has challenged the impugned order, dated 06.04.2022 passed under Section 148 A (d) of the Income Tax Act, 1961. The relevant portion from the aforesaid order reads as under:

"In view of the assessee's reply and based on the above financial transactions carried out by the assessee available on record and as the assessee did not file his return of income for the year under consideration. I suggest that this case is a fit case for re-opening of assessment under Section 148 for assessment year 2015-2016 being deemed to be a case where income chargeable to tax has escaped assessment.

This order is issued with the prior approval of the specified authority under Section 151 of the Income Tax Act, 1961."

2. The challenge to the impugned order seeking to re-open the assessment under Section 148 A (d) of the Income Tax Act, 1961 for the assessment year 2015-2016 is primarily on the ground that the petitioner was not put to notice as to the allegations in the impugned order. It is submitted that the notice under Section 148 A (b) of the Income Tax, 1961 was issued to the petitioner on 26.03.2022 and the reasons for issuing the aforesaid notice was that there was a deposit to the tune of Rs.2,66,90,364/- and therefore, the petitioner was called upon to furnish a reply to which the petitioner has also responded by a reply. It is submitted that though the amount has been quantified in the impugned order matches with the purported reasons given at the time of issue of Section 148 A (b) notice on 26.03.2022, the petitioner was not put to notice as to the basis on which the aforesaid amount has been arrived. It is submitted that the petitioner had only four bank accounts with the following banks:

(i) KarurVysya Bank -Valasaravakkam Branch, Chennai- A/c No.1264155000004303

(ii) Punjab National Bank – Sirkali Branch – A/c No.0489000100045324.

(iii) Tamil Nadu Mercantile Bank – T.Nagar Branch, Chennai- A/c No.055100050085615.

(iv) City Union Bank – Purasawalkam Branch, Chennai – A/c No.500101010297854.

3. It is submitted that total transaction and cash deposit was only for a Sum of Rs.4,10,598/- and not to Rs.2,66,90,364/-. It is therefore submitted that the impugned order seeking to re-open the assessment and further proceeding under Section 148 of the Income Tax Act, 1961 was in gross violation of principles of natural justice and therefore liable to be quashed.

4. Opposing the prayer, the learned senior standing counsel for the repsondents submits that the petitioner has not been filed a regular return under Section 139 of the Income Tax Act, 1961 and the information was brought to the notice of the department from the Income Tax portal/under the Risk Management Strategy. It is submitted that the petitioner is a defaulter as far as the compliance of the requirements of the Income Tax under the Rules made thereunder inasmuch as no returns was filed by the petitioner and that the petitioner knew as to which are subject matter of the aforesaid notice issued under Section 148 A (b) of the Income Tax Act, 1961. It is further submitted that the impugned order is not really an order but a notice to proceed further under Section 148 of the Income Tax Act, 1961 and therefore no prejudice will cause

to the petitioner as the petitioner still has an opportunity to furnish all defence and file a reply.

5. I have considered the arguments advanced by the learned counsel for the petitioner and the learned senior standing counsel for the respondents. I have also perused the show cause notice, dated 26.03.2022 issued under Section 148 A (b) of the Income Tax Act, 1961 which preceded the impugned order, dated 06.04.2022 over ruling the objection of the petitioner.

6. Though the conduct of the petitioner *prima facie* does not appear to be bonafide as the petitioner has not filed a return under the Income Tax Act, 1961, Nevertheless, the petitioner was entitled to a proper show cause notice particularising the basis on which the proceedings were to be concluded under Section 148 A (b) of the Income Tax Act, 1961. The reasons given in the order without proper explanation cannot be sustained as it is in violation of principles of natural justice. The petitioner is entitled for fair chance to defend himself before the respondents can proceed to issue a notice under Section 148 of the Income Tax Act, 1961. The purpose of incorporating Section 148 A of the Income Tax Act, 1961 is to incorporate the requirements of the Hon'ble Supreme Court decision in the case of **GKN Driveshafts (India) Limited Vs ITO 259 ITR 19 (SC)**.

7. Under these circumstances, I am inclined to quash the impugned order and remit the case back to the respondents to pass fresh order. The impugned order which now stands quashed shall be treated as a corrigendum to the show cause notice, dated 26.03.2022. The petitioner is directed to file a reply within a period of three weeks from the date of copy of this order. The respondents are directed to pass a fresh order denovo under Section 148 A of the Income Tax Act, 1961 within a period of three weeks thereafter.

8. The writ petition stands disposed of with the above observations. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar(CS)

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To

1.The Income Tax Officer,
  Ward 1, Kumbakonam,
  No.31, Krishnaswamy Road, Gandhi Nagar,
  Kumbakonam, Tamil Nadu-612001.

2.The Principal Chief Commissioner of Income Tax,
  No.121, Mahatama Gandhi Road,
  Chennai-34.

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-22662[F] dated 29/04/2022)

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-23137[F] dated 02/05/2022)

W.P(MD).No.9044 of 2022

29.04.2022

USK/31.05.2022/4P/5C