IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **11.09.2023**

CORAM

THE HONOURABLE MR.JUSTICE C. SARAVANAN

W.P.No.7425 of 2021 and
W.M.P.Nos.7941 and 7943 of 2021

1. K.Sivasubramaniam (Deceased)

2. Kalarani Sivasubramaniam … Petitioner
(P2 substituted as legal representative
of the deceased petitioner vide order dated
18.07.2023 in WMP No.3480 of 2022)

Vs.

1. The Income - tax officer,
Office of the Income-tax Officer,
Non-Corporate Ward 19(6),
6th Floor, Income Tax Annex Building,
121, MG Road,
Chennai - 600 034.

2. Assistant Commission of Income-tax
Non-Corporate Circle 10(1)
121, MG Road,
Chennai 600 034. … Respondents

Prayer : Writ Petition filed under Article 227 of Constitution of India, praying to issue Writ of Certiorari, calling for the records and quash the order dated 19.01.2021 passed by the second respondent under Section 154 of the Income Tax Act, 1961 for Assessment year 2012-13 reference PAN AABPS1313F.

For Petitioner : Mr.Joseph Prabakar

For Respondents : Ms.S.Premalatha, for
Mr.R.Balaji,
Standing counsel

ORDER

This Writ Petition has been filed, to quash the order dated 19.01.2021 passed by the second respondent under Section 154 of the Income Tax Act, 1961 for Assessment year 2012-13 reference PAN AABPS1313F.

2. The issue that survives for consideration in this case is relating to brokerage cost of Rs.58,75,569/- which was allegedly paid by the petitioner to the following brokers as detailed below:-

S. No.	*NAME*	*PAN No.*	*ADDRESS*
1	R.Thangarajan	AGCPR4774L	55 H/3, Manali New Town,

S. No.	*NAME*	*PAN No.*	*ADDRESS*
			Chennai 103.
2	P.Govindarajan	ADDPG5162F	41/5 first floor, west road, w.cit Nagar, chennai 35.
3	Frontline 1	ANWPM0008K	41/5 first floor, west road, w.cit Nagar, chennai 35.
4	KPM Projects (P) Ltd.,	AACCK1416B	S.K.Nagar, Trichy Bye-Pass, Seelanaickenpatty, Salem.
5	K.Saravanan	EAXPS4940E	No.79, 2nd main road, Antony Nagar, Annaur, Avadi, Chennai-109.
6	K.Sethuraman	AXKPK6734E	1/761 2nd cross street, Karthikeyapuram, Madipoakkam, Chennai -600091.

3. In the original Assessment Order dated 16.12.2019 passed under Section 144 r/w. 147 of the Income Tax act, 1961, wherein it has been stated that the petitioner has claimed Rs.58,75,771/- as deduction towards brokerage amount. Relevant portion of the said order is extracted hereunder:

> *"9. <u>Claim of brokerage:</u> In the return of income filed originally on 29.07.2012 assessee has claimed an amount of Rs.58,75,771/- as brokerage paid. this case, the assessee has only produced copies of cheques issued to one broker M/s.KPM projects of Rs.14,95,241/-during I&CI verification. Therefore, the difference between the brokerage claimed of Rs.58,75,771 and evidence produce for Rs.14,95,241/- is*

disallowed and added back to the total income."

4. The petitioner thereafter filed a petition under Section 154 of the Income Tax Act, 1961 on 19.01.2021, which has now culminated in the impugned order. Relevant portion of the impugned order reads as under:

> ***(i) Brokerage paid: Addition made: Rs.43,80,530/-***
>
> *In the return of income assessee claimed deduction of Rs.58,75,771/- under the head brokerage paid while computing capital gains on sale of immovable property. Assessee was asked to furnish confirmation letter from the brokers to whom he claimed to have paid brokerage vide letter dated 25-09-2019. However he filed confirmation letter only from M/s.KPM Projects P. Ltd to whom a sum of Rs.14,95,241/- was paid. Hence claim to that extent was allowed in the Assessment Order. Assessee filed details of other brokers and letters were sent to such parties requiring to furnish details of commission received during Financial Year 2011-12. However, the following persons to whom Assessee claimed to have paid brokerage have not responded:*

Name of the alleged recipient	*Amount*
R.Thiagarajan	*6,23,017/-*
K.Saravanan	*3,81,000/-*
K.Sethuraman	*30,80,000/-*
Total	*40,04,017/-*

- *The assessee did not file confirmation letter from such parties.*
- *No evidence was filed to show that such receipts are*

reflected in the Income tax returns filed by such parties.

- *The transactions by cheque only testifies the transaction and not the nature of transaction i.e claim that payments were made by cheque only goes to prove the payment and it does not prove whether such payments were towards brokerage for land sold by the assessee during the previous year.*
- *Claim of brokerage by assessee in this transaction is very huge i.e., 7.7% whereas the industry average is 2% i.e Rs.15,24,280/-.*

Consider the above, the disallowance under this head is retained at Rs.40,04,017/- since the assessee failed to furnish evidence to that extent."

5. The respondents in their counter stated as follows:

"6. The petitioner did not file confirmation letter from such parties and no evidence was filed to show that such receipts were declared in the Income tax returns filed by such parties. The transactions by cheque only testifies the transaction and not the nature of transaction i.e claim that payments were made by cheque only goes to prove the payment and it does not prove whether such payments were towards brokerage for land sold by the petitioner during the previous year.

7. It is submitted that the claim of brokerage by petitioner in this transaction is very huge i.e.7.7% whereas the industry average is 2% i.e Rs.15,24,280/-. Considering the above, the disallowance under this head was retained at Rs.40,04,017/- since the petitioner failed to furnish evidence to that extent. It is completely wrong to contend that the 2nd *respondent has made a new case in order dt.19.01.2021 passed u/s.154 of the Act. It is submitted that the reasons given by the 2nd respondent are only consequential to the steps taken by the respondent in response to the petition u/s.154 filed by the petitioner herein and not any extraneous reasons.*

6. A careful reading of the impugned order and also the Assessment Order dated 19.01.2021 indicates that there is a clear non application of mind while passing the impugned order. Considering the same, the impugned order dated 19.01.2021 passed by the 2nd respondent is quashed and the case is remitted back to the respondents, to pass fresh orders on merits and in accordance with law. The impugned order insofar as it confirms the amount of Rs.40,04,017/- as the amount added to the income of the petitioner, shall be treated as a Show Cause Notice. The petitioner shall file a reply to the same within a period of a period of two weeks from the date of receipt of a copy of this order and the 2nd respondent shall pass a fresh order within a period of six weeks thereafter.

7. With the above direction, this Writ Petition is disposed of. No

costs. Consequently, connected miscellaneous petitions are closed.

11.09.2023
(2/2)

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Index: Yes/No
Speaking order/Non Speaking order

To

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C. SARAVANAN,J.

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