IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2023

CORAM

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.No.5877 of 2022
and
W.M.P.Nos.5976 & 14342 of 2022

Thiruporur Govindaswamy Venkatesh ... Petitioner

Vs.

1.Income Tax Officer,
Non-Corporate Circle 1(6)
121, Mahatma Gandhi Road,
Chennai.

2.Principal Commissioner of Income Tax
Chennai-1
121, Mahatma Gandhi Road,
Chennai.

3.Income Tax Officer
International Taxation 2(2)
121, Mahatma Gandhi Road,
Chennai. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records on the file of the Respondents and quash the impugned notice under section 148 of the Income tax Act, 1961 in PAN: ACIPV6233C dated 27.03.2021 in DIN and ITBA No.

ITBA/AST/S/148/2020-21/1031827987(1) issued by the 1st respondent for the assessment year 2014-15.

For Petitioner : M/s.N.V.Lakshmi

For Respondents : Mr.Prabu Mukund Arun Kumar
Junior Standing Counsel

O R D E R

This writ petition has been filed challenging the notice issued by the 1st respondent under Section 148 of the Income Tax Act (in short, 'the Act') , 1961 dated 27.03.2021 for the Assessment year 2014-2015.

2. The learned counsel for the petitioner mainly contended that the 1st respondent has issued a notice under Section 148 of the Act, who is having no jurisdiction. But the 3rd respondent is having the jurisdiction to issue the said notice. Even as per the provisions of the Act, the 3rd respondent is the Jurisdictional Officer, empowered to issue the notice under Section 148 for reassessment.

3. On the other hand, learned Junior Standing Counsel appearing on behalf of the respondents would submit that the petitioner has filed his

Income Tax Returns as a resident. When the petitioner himself has submitted his Income Tax Returns under the status of resident, then the Jurisdictional Officer is entitled to issue notice under Section 148 as resident assessment. Therefore, 1st respondent, who is the Jurisdictional Officer for the persons falling under the status of resident, has issued the said notice.

4. It is further contended that the petitioner filed his returns during the Assessment Year 2018-2019 and 2019-2020 as non-resident. Therefore, the 3rd respondent, who is the Jurisdictional Officer had initiated Section 148 proceedings. Even though the petitioner filed his returns as resident, the Department came to know about that there was a mistake committed by the petitioner and later the Department transferred it to the 3rd respondent.

5. Considering the submissions made by the learned counsel for the petitioner as well as the learned Junior Standing Counsel appearing on behalf of the respondents, the central issue to be decided in this case is as to, whether the 1st respondent being the jurisdictional officer for resident status assessees is empowered to issue notice under Section 148.

6. Since the petitioner initially filed the return by showing his status as resident, the 1st respondent is the jurisdictional officer to issue Section 148 notice for the residential assessment. However, the Department assessed the returns filed by the petitioner for the Assessment years 2018-2019 and 2019-2020 through 3rd respondent, who is the jurisdictional officer for the assessees of non-resident. Since the 3rd respondent is the jurisdictional Officer for non-residents and because of the mistake committed by the petitioner in filing the returns for the Assessment Year 2015-2016 by showing the status as resident, Section 148 proceedings were initiated by the 1st respondent.

7. Even though the 1st respondent initiated Section 148 proceedings subsequently the Department transferred it to the 3rd respondent, who has now been continuing with the proceedings.

8. At this juncture, the learned counsel for the petitioner would submit that the respondent may be directed to furnish the relevant documents and other details, under which the proceedings under Section 148 of the Income

Tax Act were initiated.

9. As far as this aspect is concerned, since now the files have been transferred to the 3rd respondent, who is the jurisdictional officer empowered to make the assessment and reassessment proceedings for the non-resident assessee and also empowered to initiate the proceedings under Section 148 of the Income Tax Act, it is for the petitioner to make his request before the concerned officer, if required, in which case the 3rd respondent shall consider the same in accordance with law.

10. Thus, this Court is not inclined to interfere with the initiation of proceedings with the third respondent. In fact, the respondents had rectified the mistake of the petitioner and transferred the proceedings from the 1st respondent to the 3rd respondent. Hence, this Court is of the considered view that there is no impediment for the 3rd respondent to continue with the proceedings as it is. However, the 3rd respondent is directed to provide opportunity of personal hearing to the petitioner and thereafter, pass appropriate order in accordance with law.

11. With the above directions, this Writ Petition is disposed of. Consequently, the connected Miscellaneous Petition is also closed. No costs.

30.10.2023
(1/2)

Jeni
Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation : Yes / No

To

1.The Income Tax Officer,
Non-Corporate Circle 1(6)
121, Mahatma Gandhi Road,
Chennai.

2.The Principal Commissioner of Income Tax
Chennai-1
121, Mahatma Gandhi Road,
Chennai.

3.The Income Tax Officer
International Taxation 2(2)
121, Mahatma Gandhi Road,
Chennai.

KRISHNAN RAMASAMY, J.

Jeni

W.P.No.5877 of 2022

30.10.2023
(1/2)