IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2022

CORAM

THE HON'BLE MR. JUSTICE C. SARAVANAN

W.P.No.11088 of 2022
and
W.M.P.Nos.10683 & 10684 of 2022

S.V.K. Estates,
Represented by its Partner,
Vijay Surana J. .. Petitioner

Vs..

Assistant Commissioner of Income Tax,
Non-Corporate Circle 7(1),
No.121, M.G. Road, Nungambakkam,
Chennai – 600 034. .. Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus, to call for the records of the respondent contained in its notice bearing DIN & Notice No.ITBA/AST/S/148/2020-21-1031734142(1), dated 24.03.2021, issued by the respondent under Section 148 of the Income Tax Act, 1961, for PAN: ACDFS5437L for Assessment Year 2015-16, including the assessment order dated 30.03.2022 passed by the respondent under Section 144 r/w Section 147 of the Income Tax Act, 1961, and the notice of Demand under

Section 156 of the Income Tax Act, 1961, dated 30.03.2022, for PAN:ACDFS5437L for Assessment Year 2015-16, and to quash the same as arbitrary, illegal and unjust, and to consequently forbear the respondents or its superiors, subordinates, agents etc., from re-assessing the petitioner's income for the assessment year 2015-16 under Section 147 of the Income Tax Act, 1961.

For Petitioner : Mr.Suhrith Parthasarathy

For Respondent : Mr.B.Ramana Kumar,
Senior Standing Counsel

ORDER

The petitioner has challenged the impugned assessment order dated 30.03.2022 for the Assessment Year 2015-16. Relevant portion of the impugned order reads as follows:

> *"6. It is clear that the assessee, on the date of registration of the document has not aware of the alleged dispute. Therefore, in the purchase document, the seller has stated that the entire sale consideration of Rs.3,75,00,000/- was received before the date of registration. The document was registered in the year 2014, however, the alleged petition was filed in the year 2015. The copy of the petition furnished*

by the assessee is partly unclear and there is no acknowledgement by the Court in the petition. This clearly shows that the assessee prepared these documents to evade tax by not explaining the source for purchase of the above-mentioned property. The assessee was specifically asked to furnish PAN number of the seller Shri Ramaraj. However, the assessee has failed to furnish the complete details. Therefore, cross verification of Capital Gain Tax paid by the seller was not carried out. Hence, it is clear that the assessee wanted to evade tax by furnishing inaccurate particulars. Therefore, the balance amount of Rs.2,40,00,000/- for which the assessee was not able to furnish source or documentary evidence, and hence the same is treated as unexplained investment of the assessee u/s 69 of the Income Tax Act, 1961 and added to the total income of the assessee. The assessment is completed as under:

Returned Income	*Rs.0/-*
Addition as discussed above	*Rs.2,40,00,000/-*
Total assessed income	*Rs.2,40,00,000/-*

7. As the assessee has furnished inaccurate particulars of its income, penalty proceedings u/s 271(1)(c) of the Income Tax Act, 1961 is initiated separately."

2. The specific case of the petitioner is that the petitioner was called upon to furnish the details of the purchaser, by a letter dated 17.03.2022 which was responded by the petitioner on 22.03.2022 and 28.03.2022. It is further submitted that the petitioner had purchased the property which was under litigation and therefore, had paid a sum of Rs.1,35,00,000/- to the buyer and had issued a cheque for Rs.2,40,00,000/- being the balance under the sale deed dated 14.08.2014.

3. That apart, it is submitted that the petitioner and the seller have also filed a suit before the District Munsif Court, Chengalpattu in O.S.No.158 of 2015 to declare the previous sale and settlement deed as null and void to ensure that the petitioner has a clear title over the said property and that the balance amount of Rs.2,40,00,000/- was to be paid in case, the suit is decreed in favour of the plaintiff namely the petitioner and the seller in O.S.No.158 of 2015. It is submitted that the petitioner had uploaded all the information that was required. However, without considering the same, the respondent shall proceed and pass the order.

4. On the other hand, the learned counsel for the respondent would submit that the notice under Section 148 of the Income Tax Act, was issued on 24.03.2021. However, the petitioner filed the return only on 08.03.2022. It is submitted that the petitioner was not cooperating with the income tax department. Therefore, the respondent was constrained to pass the impugned order on 30.03.2022. It is submitted that the petitioner was asked to furnish the source of Rs.2,40,00,000/- and Rs.1,35,00,000/-. However, failed to furnish the same.

5. *Prima facie,* it appears that the petitioner has not transferred the aforesaid balance amount of Rs.2,40,00,000/- to the buyer through normal banking channel. The petitioner appears to have furnished the details of the seller pursuant to communication dated 28.03.2022. The petitioner had also uploaded copy of the sale deed dated 14.08.2014, copy of the plaint in O.S.No.158 of 2015 filed before the District Munsif Court, Chengalpattu against various persons. The respondent has however passed the impugned order without considering the same.

6. Considering the above, the impugned order is set aside. The respondent is directed to pass a fresh order within a period of six months from the date of receipt of copy of this order. The petitioner is directed to cooperate with the respondent. The petitioner shall furnish all details regarding the sale transaction and status of the suit.

7. With the above direction, this Writ Petition is disposed of. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

18.07.2023

Index:Yes/No
Neutral Citation:Yes/No

AT

To
The Assistant Commissioner of Income Tax,
Non-Corporate Circle 7(1),
No.121, M.G. Road, Nungambakkam,
Chennai – 600 034.

C.SARAVANAN,J.

AT

W.P.No.11088 of 2022 and
W.M.P.Nos.10683 & 10684 of 2022

18.07.2023