IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2023

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THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.No.12886 of 2022 and
WMP.Nos.12388 and 12389 of 2022

Vedha Srinivasan ... Petitioner

..Vs...

1. Assistant Commissioner of Income Tax,
Non-Corporate Circle 11(1),
Room No.208, BSNL Building,
2nd Floor, No.16, Greams Road,
Chennai 600 006.

2. Additional/Joint/Deputy/Assistant
Commissioner of Income Tax/Income Tax Officer,
National Faceless Assessment Circle,
New Delhi. ... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the 1st Respondent contained in notice dated 31.03.2022 issued under Section 148 of the Act bearing ITBA/AST/S/148/2020-21/1032041100 (1) for PAN:ACGPV6395P for AY 2017-18 and all the proceedings in furtherance thereof, including assessment order dated 29.03.2022 bearing ITBA/AST/S/147/2021-22/1041907032 (1) passed by the 2nd Respondent, and to quash the same as arbitrary and illegal.

For Petitioner : Ms.Ashwini Vaidialingam

For Respondents : Dr.B.Ramaswamy
Senior Standing Counsel

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ORDER

This Writ Petition has been filed challenging the order of the 1st Respondent dated 31.03.2022, issued under Section 148 of the Income Tax Act, 1961 (for brevity 'the Act') bearing ITBA/AST/S/148/2020-21/1032041100 (1) for PAN:ACGPV6395P for AY 2017-18 and all the proceedings in furtherance thereof, including assessment order dated 29.03.2022 bearing ITBA/AST/S/147/2021-22/1041907032 (1) passed by the 2nd Respondent, and to quash the same as arbitrary and illegal.

2.The facts in nutshell, placed before this Court by the petitioner, are as follows:

(i) The Petitioner is an income tax assessee and on 03.01.2018, she filed her return of income for the Assessment Year 2017-18, disclosing her income at Rs.6,10,413/- by paying tax of Rs.10,350/- and the same was processed under Section 143 of the Act. During the previous Assessment Year, i.e. AY 2016-17, the Petitioner had executed a Power of Attorney dated 16.12.2015, in favour of one Mr.R.M.Jagannathan, for the purpose of selling a vacant land of 0.24 cents situated at No.25, Thiruporur Village, Kancheepuram District bearing Patta No.153 and comprised in Survey No.125 (hereinafter referred to as 'Thiruporur land'). The Petitioner, while executing the said Power of Attorney, handed over the physical possession to her Power of Attorney Mr.R.M.Jagannathan and in return received a total consideration of Rs.50,00,000/- (Rupees Fifty Lakhs only) and the said payment was made on various dates between 28.09.2015 and 01.10.2015 by way of account payee cheques. While filing her return of income for AY

2019-17, the Petitioner paid tax on the long term capital gains of Rs.50,00,000/- (Rupees Fifty Lakhs only) from sale of the Tiruporur land.

(ii) Whileso, on 25.06.2016, Mr.R.M.Jagannathan registered a sale deed transferring the Tiruporur land to his son, one Mr.Hari Prasad, for a consideration of Rs.50,00,000/- (Rupees Fifty Lakhs only) and in the Sale Deed the market value of the Tiruporur land was mentioned as Rs.1,04,64,000/- (Rupees One Crore Four Lakhs Sixty Four thousand only). On 18.09.2017, the Petitioner received a notice under Section 143 (2) for the Assessment Year 2016-17 for the limited scrutiny assessment of Capital Gains earned by the Petitioner on the sale of 1475 sq.ft. of land in Besant Nagar on 09.10.2015. The sale of Tiruporur land was not the subject matter of these scrutiny proceedings. Thereafter, on 29.12.2018, the Respondent passed an Assessment Order under Section 143 (3) of the Act, for the Assessment Year 2016-17, recomputing the long term capital gains on the sale of the Besant Nagar land, by raising a demand of Rs.23,22,268/- and the sale of Tiruporur land was not the subject matter of this order. Being aggrieved over the said order dated 29.12.2018, the Petitioner filed an Appeal before the Commissioner of Income Tax (Appeals), on 01.02.2019 and the same is still pending.

(iii) While the matter stood thus, the 1st Respondent herein submitted a proposal to the Principal Commissioner of Income Tax-8, Chennai in respect of the Assessment Year 2016-17, stating that the long term capital gains computed in respect of the Tiruporur land was incorrect on the ground that the market value of the land was shown as Rs.1,04,64,000/-(Rupees One Crore Four Lakhs Sixty Four thousand only). Pursuant to the said proposal, the Principal Commissioner of Income Tax-8, passed an order dated 27.03.2021, under Section 263 of the Act, by setting aside the Assessment Order dated 29.12.2018, against which the Petitioner filed an Appeal before the Income Tax Appellate Authority, which is still pending. Subsequently, on 31.03.2021, the 1st Respondent issued a notice under Section 148 of the Act, re-opening the assessment for the Assessment Year 2017-18, for the same transaction i.e., the long term capital gains realised on the sale of land at Thiruporur, which is is impugned in this Writ Petition.

(iv) Thereafter, the Respondents simultaneously proceeded with Re-assessment proceedings under Section 148 of the Act, for the Assessment Year 2017-18 and the assessment proceedings for the Assessment Year 2016-2017, between August 2021 to March 2022. Both these proceedings were in respect of the same transaction i.e, the long term capital gains realised on the sale of Thiruporur land. The Petitioner duly co-operated with the authorities in respect of these proceedings, by furnishing all details/documents sought for. The Petitioner submitted that the entire consideration for the land had been paid to the Petitioner during Assessment Year 2016-2017, and while filing return of income for Assessment Year 2016-2017, the Petitioner had already paid tax on the long term capital gains arising on account of the same. Subsequently, Assessment Order came to be passed on 29.03.2022 (Consequential impugned order), by the 2nd Respondent holding that the sale consideration for the Thiruporur land was Rs.1,04,64,000/- (Rupees One Crore Four Lakhs Sixty Four Thousand only) and accordingly added the same back to the income of the Petitioner for the Assessment Year 2017-18. Thereafter, on 30.03.2022, Assessment Order was passed for the Assessment Year 2016-17 holding that the sale consideration for the Thiruporur land is

Rs.1,04,64,000/- (Rupees One Crore Four Lakhs Sixty Four Thousand only) and accordingly added the same back to the income of the Petitioner for the said Assessment Year.

3. The learned counsel for the Petitioner submitted that the impugned assessment order dated 29.03.2022, pertains to the year 2017-18 and during the Assessment Year 2016-17, the Petitioner executed a Power of Attorney in favour of Mr.R.M.Jegannathan on 16.12.2015, for the sale of Tiruporur land. At the time of entering into Power of Attorney, the Petitioner has received a sum of Rs.50,00,000/- (Rupees Fifty Lakhs only) for the said sale and thereafter not received any amount. He further submitted that the notice issued under Section 148 of the Act, for the Assessment Year 2017-2018 is without jurisdiction as there is no "fresh tangible material" and if at all any such material exists, it only exists for the Assessment Year 2016-2017. Therefore, he prays to quash the re-assessment proceedings in respect of the Assessment year 2017-2018, as the same transaction i.e., sale of Thiruporur land, is sought to be taxed twice i.e., for the Assessment Year 2016-2017 and also for the Assessment Year 2017-2018 and therefore as consequence of

which, there is a dual taxation. It is his further contention that Show Cause Notice containing the draft assessment order was issued to the Petitioner on 27.03.2022 and thereafter impugned assessment order came to be passed on 30.03.2022, which is in violation of principles of natural justice.

4. The learned counsel for the Petitioner filed an affidavit dated 24.11.2023, wherein in paragraph 3, it is stated as follows:

> "*3. I state that the issue forming subject matter of the appeal against the assessment order passed for AY 2016-17 is only with respect to the quantum of capital gains received in AY 2016-17 - i.e., the only issue before the appellate authority is whether the capital gains must be computed on the sale consideration of Rs.50 lakhs or on the purported market value of Rs.1.04 crores as assessed in the order dated 30.03.2022. I state that the appeal is not on the ground that the transaction did not occur in AY 2016-17; on the contrary even in the appellate proceedings, I have admitted that the transaction occurred in AY 2016-17. I state that the transaction did not occur in AY 2017-18. Therefore, the interest of revenue is wholly protected.*"

5. By referring to the aforesaid paragraph, he submitted that in the event of recovery of Capital Gain tax, by the Respondents by taking into

consideration that the sale consideration was made for a sum of Rs.1,04,64,000/- (Rupees One Crore Four Lakhs Sixty Four Thousand only), they can very well do the same for the Assessment year 2016-17, since except the amount received at the time of execution of Power of Attorney, he has not received any amount. Therefore, he prays to allow this Writ Petition, by setting aside the impugned notice dated 31.03.2022 as well as consequent assessment order dated 29.03.2022.

6. In reply, the learned counsel appearing for the Respondents submitted that from the Document No.199/2016, dated 16.12.2015, it is seen that the document is not a Sale Deed but mere appointment of Sri R.M.Jaganathan as Power of Attorney, however the Sale Deed was executed on 26.05.2016. He further submitted that the total Capital Gains arising out of the sale consideration of Thiruporur land is a sum of Rs.1,03,50,857/- (Rupees One Crore Three Lakhs Fifty Thousand Eight Hundred and Fifty Seven only) and therefore in order to protect the interest of revenue present proceedings have been initiated. He relied on paragraph 4 of the Impugned order dated 29.03.2022, wherein it is stated as follows:

"4. On verification it is noticed that "the document No.199/2016 dated 16.12.2015, it is seen that the document is not a sale deed but merely appointment of Sri R.M.Jaganathan as Power of Attorney. It is further seen that the amount of capital gains was arrived on the basis of the document No.199/2016 and the assessee treated the sale as liable for capital gains and accordingly, offered the same to tax in the A.Y.2016-2017. However, in the Sale deed No.6033/2016 dated 26.05.2016 between Sri R.M.Jaganathan, Power of Attorney Holder of the assessee of Sri Hariprasad (PAN:ABMPH664PF), s/o Sri R.M.Jagannathan, it was mentioned that the assessee sold the impugned property to Sri R.M.Jaganathan, being her Power of Attorney Holder. However, as the sale deed was executed on 26.05.2016, the Capital Gains ought to have been computed for the AY 2017-18. Further, it is seen that the capital gains as admitted/determined in the AY 2016-17, is different from the above said property as the schedule of the above said property is No.25, Tiruppur Village & Taluk, Kanchipuram Dist. Patta No.153, Survey No.125, extent 0.24 cents. Further, as seen from the sale deed dated 26.05.2016, the Market Value of the property as per the document No.6033/2016 is Rs.1,04,64,000/- whereas it is seen from the return of income that the capital gains were shown at Rs.Nil only and the LTCG of Rs.1,03,50,857 ought to have been adopted for AY 2017-18 as per Sec.50C of the IT Act as per working given below:

Sale consideration	*:*	*Rs.1,04,64,000/-*
Less:Indexed cost of acquisition	*:*	*Rs. 1,13,143/-*
Long Term Capital Gains	*:*	*Rs.1,03,50,857/-*

As discussed above, the income chargeable of tax of Rs.1,03,50,857/- has escaped assessment."

7. He further submitted that orders have been passed for both Assessment Years 2016-17 as well as 2017-18, assessing the very same transaction and the very same quantum and this does not mean that the respondents are claiming tax twice on the very same transaction and the respondents have passed both the orders in order to ensure that the transaction of sale of property at Thiruporur does not escape from the net of taxation on the ground of limitation at the end of all litigations in any one of the assessment years. It is submitted that the assessments for the year 2017-18, has to be treated as a protective assessment and to that extent, the interest of the Revenue may be protected. He further submitted that the Appeal proceedings are also pending before the Appellate authority and prays for dismissal of the Writ Petition.

8. I have considered the submission made by the learned counsel for the Petitioner as well as the Respondents and perused the documents available on record.

9. The present case pertains to assessment of Capital Gains arising out

of the sale in respect of Thiruporur land. A Power of Attorney was executed by the Petitioner in favour of Sri.R.M.Jaganathan on 16.12.2015. According to the learned counsel for the Petitioner, the Petitioner received sale consideration of Rs.50,00,000/-(Rupees Fifty Lakhs only). However, the Department states that by virtue of Sale Deed executed on 26.05.2016, by the Power of Attorney holder, the property was sold for a sum of Rs.1,04,64,000/- (Rupees One Crore Four Lakhs Sixty Four Thousand only). The Petitioner states that she has not received any amount subsequent to the execution of Power of Attorney. If at all the Department wants to proceed with the assessment construing that the property was sold for a sum of Rs.1,04,64,000/- (Rupees One Crore Four Lakhs Sixty Four Thousand only), it should be for the Assessment Year 2016-2017 and not for the Assessment Year 2017-2018. That apart merely because the Sale Deed was executed by the Power Agent, it will not create any liability for payment of Capital Gains for the Assessment Year 2017-2018. It is because the petitioner received entire sale consideration at the time of execution of Power of Attorney itself whether it is a sum of Rs.50,00,000/- or Rs.1,04,64,000/-. Since the sale consideration was received on 16.12.2015 itself, even assuming that the

Department proceeded taking note of the market value of Rs.1,04,64,000/- (Rupees One Crore Four Lakhs Sixty Four Thousand only), it should be for the year 2016-2017, alone and not for the Assessment Year 2017-2018 Therefore, the proceeding against the petitioner for the Assessment Year 2017-18 by virtue of impugned order, is not sustainable.

10. Considering the submission made by the learned counsel for the Petitioner as well as the learned Senior Standing Counsel appearing for the Respondents, this Court is of the considered view that since the petitioner has taken a stand that the entire amount of sale consideration was received on 16.12.2015 that would be the date for receipt of the sale consideration by the petitioner either for a sum of Rs.50,00,000/- (Rupees Fifty Lakhs only) or a sum of Rs.1,04,64,000/- (Rupees One Crore Four Lakhs Sixty Four Thousand only) as alleged by the Respondents.

11. In view of the admission of this aspect by the Petitioner by virtue of oral submission and by virtue of filing of the additional affidavit, this Court is of the considered view that the Impugned Notice of the 1st Respondent dated

31.03.2022 as well as Impugned Assessment Order dated 29.03.2022 are liable to the set aside. Accordingly, the same are set aside. It is made clear that in the event if the petitioner takes a different stand in future that any of the Capital Gains arising out of the sale of the Thiruporur property has to be considered for Assessment Years 2017-18 in which case, the Respondents are at liberty to initiate proceedings against the Petitioner. Since, the matter is pending before the Appellate authority pertaining to the Assessment Year 2016-17, the Appellate authority shall consider this aspect with regard to the receipt of sale consideration and decide the same for the Assessment Year 2016-17.

In the result, this Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

29.11.2023

arr

To:

1. Assistant Commissioner of Income Tax,
   Non-Corporate Circle 11(1),
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   Chennai 600 006.

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   Commissioner of Income Tax/Income Tax Officer,
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KRISHNAN RAMASAMY, J.
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