IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.09.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.22792 of 2023
and
W.M.P.Nos.22247 and 22248 of 2023

Saloni Prakash Kumar ... Petitioner

Vs.

1.Income Tax Officer,
Ministry of Finance,
Non Corporate Ward 6(1),
Income Tax Department,
Chennai – 600 006.

2.Assessment Unit,
Income Tax Department,
New Delhi. ... 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 pertaining to the Notice u/s 148A(b) dated 16.03.2022, PAN No.AAXPS5844D, in DIN : ITBA/AST/F/148A(SCN)/2021-2022/1040904890(1) issued by the first respondent, the order u/s 148A(d) dated 31.03.2022 vide ITBA/AST/F/148A/2021-2022/1042350638(1) issued by the first respondent and the order dated 22.03.2023 u/s 147 read with section 144B of Income

Tax Act, PAN No.AAXPS5844D in DIN : ITBA/AST/S/147/2022-2023/1051124831(1) passed by the second respondent and quash the same.

For Petitioner : Mr.Ravi Kannan

For Respondents : Dr.B.Ramaswamy
Senior Standing Counsel

ORDER

The petitioner is aggrieved by the impugned Assessment Order in ITBA/AST/S/147/2022-2023/1051124831(1) dated 22.03.2023 passed by the second respondent under Section 147 read with Section 144B of the Income Tax Act, 1961 (hereinafter referred to as the IT Act).

2. Pursuant to a notice dated 16.03.2022 issued under Section 148A(b) of the IT Act, an order was passed under Section 148A(d) of the IT Act on 31.03.2012, pursuant to which, the impugned Assessment Order was passed on 22.03.2023.

3. The learned counsel for the petitioner would submit that the entire exercise for reopening the assessment was based on the search that is said to have taken place in the premises of one Naresh Jain and his associates.

4. In this connection, a reference is made to the following passages from the impugned Assessment Order:

> ***"Thus, total income of Rs.40,60,972/- remains unchanged but an amount of Rs.39,39,768/- is taxed u/s 68 of I-T Act in place of long term capital gains of Rs.39,39,768/- claimed from sale of shares of penny scrip Monotype India Ltd.***
>
> ***Assessed u/s. 147 r.w.s. 143(3) r.w.s. 144B of the Income-tax Act, 1961. Interest u/s. 234A, 234B, 234C and 234D of the Income-tax Act, 1961 as applicable is charged. Credit for prepaid taxes is given after due verification. Computation of income and demand notice are issued herewith.***
>
> ***Notice for penalty u/s 271AAC(1) in respect of addition made on account of unexplained cash credits u/s 68 of Income-tax Act, as mentioned above, is issued."***

5. The learned counsel for the petitioner would further submit that invocation of machinery under Section 148A(b) of the IT Act was not available to the Department.

6. In this connection, the learned counsel for the petitioner has drawn attention to the decision of the Hon'ble Supreme Court in **Principal Commissioner of Income Tax, Central-3** Vs. **Abhisar Buildwell Private Limited**, 2023 SCC Online SC 481.

7. Specifically, a reference is made to Paragraph 14 wherein, the decision of the Hon'ble Delhi High Court in **Commissioner of Income Tax, Central-III** Vs. **Kabul Chawla**, (2015) 61 taxmann.com 412 (Delhi) was quoted with approval.

8. The learned counsel for the petitioner would submit that once a search was conducted, all the proceedings under Section 148, 148A etc will have to be abated and therefore, a similar proceedings has to be taken even in the context of a person, who is said to have acted in consonance with the person, who was searched namely Naresh Jain.

9. The learned counsel for the petitioner further submitted that the only option available to the Department was to issue a notice under Section 153C read with Section 158A of the IT Act in the light of the decision of the Hon'ble Supreme Court in **Abhisar Buildwell Private Limited** case (referred to supra).

10. The learned Senior Standing Counsel for the respondents on the other hand would submit that the impugned order is well-reasoned and does not require any interference.

11. The learned Senior Standing Counsel for the respondents would further submit that the petitioner was acting in concert with the said Naresh Jain and his associates and was involved in trading of penny stocks and the shares sold by the petitioner was a penny stock shares of M/s.Monotype India Limited and therefore, the impugned Assessment Order seeking to add a sum of Rs.39,39,768/- under Section 68 read with Section 115BBE of the IT Act was justified.

12. It is further submitted that at best, the petitioner can be relegated to work out a remedy before the respondents.

13. The learned Senior Standing Counsel for the respondents further submitted that in this connection, Section 153C of the IT Act is not applicable to the facts of the present case, because the case was on the basis

of the fact that the petitioner has sold the penny stock shares to the tune of Rs.42,63,000/- and the petitioner has filed the Input Tax Return only for a sum of Rs.40,60,790/- for the Assessment Year 2018-2019.

14. Hence, the learned Senior Standing Counsel for the respondents would submit that the writ petition should be dismissed with exemplary costs.

15. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents.

16. A reading of Section 153A and 153C of the IT Act indicates that under the fourth proviso to Section 153A of the IT Act, all proceedings have abate once a machinery under Section 153A of the IT Act is invoked.

17. The fourth proviso to Section 153A of the IT Act reads as under:-

> *"Provided also that no notice for assessment or reassessment shall be issued by the Assessing Officer for the relevant assessment year or years unless-*
> *(a) the Assessing Officer has in his possession books of*

account or other documents or evidence which reveal that the income, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more in the relevant assessment year or in aggregate in the relevant assessment years;

(b) the income referred to in clause (a) or part thereof has escaped assessment for such year or years; and

(c) the search under section 132 is initiated or requisition under section 132A is made on or after the 1st day of April, 2017."

18. In this context, the decision of the Hon'ble Delhi High Court in **Commissioner of Income Tax, Central-III** Vs. **Kabul Chawla**, (2015) 61 taxmann.com 412 (Delhi) was quoted with approval by the Hon'ble Supreme Court in **Abhisar Buildwell Private Limited** case (referred to supra).

19. A reading of Section 153 of the IT Act indicates that proviso to Section 153A of the IT Act is available for completing the assessment under Section 147 of the IT Act.

20. Section 153C of the IT Act is only an enabling provision to issue a notice notwithstanding anything contained in Sections 139, 147, 148 etc of the IT Act. However, it does not preclude the Department from issuing notice for reopening the assessment under Section 148A(b) of the IT Act for

the purpose of Section 148 of the IT Act to complete the assessment under Section 147 of the IT Act.

21. Therefore, the argument that the notice was bad cannot be countenanced.

22. However, it is noticed that the petitioner has purchased the shares from M/s.Monotype India Private Limited as early as 30.03.2011. The impugned Assessment Order bears no discussion as to how the benefit of Section 10(38) of the IT Act could be denied to the petitioner by simply concluding that the petitioner was trading in penny stocks shares of M/s.Monotype India Private Limited, particularly, when the petitioner has taken a categorical stand that the shares were purchased by him from M/s.Monotype India Private Limited as early as 30.03.2011 and were sold during the Financial Year 2017-2018. (Assessment Year 2018-2019). This would require a proper consideration and discussion by the first respondent.

23. Considering the above, the impugned Assessment Order is set aside and the case is remitted back to the first respondent to pass a fresh

order on merits and in accordance with law within a period of six weeks from the date of receipt of a copy of this order.

24. This Writ Petition is disposed of with the above observations. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

05.09.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No

arb

To

1.Income Tax Officer,
Ministry of Finance,
Non Corporate Ward 6(1),
Income Tax Department,
Chennai – 600 006.

2.Assessment Unit,
Income Tax Department,
New Delhi.

C.SARAVANAN, J.

arb

W.P.No.22792 of 2023
and
W.M.P.Nos.22247 and 22248 of 2023

05.09.2023