IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2023

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THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.No.18724 of 2021
and
W.M.P.No.19992 of 2021

AnumoluVenketeswara Kishore
K-52-A, K-Block,
Anna Nagar,
Chennai – 600102.
PAN No. ABHPV2131M ... Petitioner

Vs

1.The Additional/Joint/Deputy/Assistant Commissioner of Income Tax/Income Tax Officer,
National Faceless Assessment Centre,
Income Tax Department,
Ministry of Finance,
Room No.401, 2nd Floor, E-Ramp,
Jawaharlal Nehru Stadium,
Delhi – 110 003.

2.The Deputy Commissioner of Income Tax,
Non Corporate CIRCLE 7(1),
No.121, Mahatma Gandhi road,
Nungambakkam,
Chennai – 600034. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the first respondent herein in Impugned Order No. DIN : ITBA/AST/S/143(3)/2021-22/1034855685(1), dated 13.08.2021 passed by the first respondent for the Assessment Year 2018-19 and quash the order dated 13.08.2021 passed and consequently direct the first respondent to hear the Assessment Proceedings in PAN No.ABHPV2131M for AY 2018-19 afresh by giving opportunity to the petitioner.

For Petitioner : Mr.V.S.Jayakumar
Senior Counsel for
M/s.G.Vardini Karthik

For Respondents : Mr.B.Ramanakumar
Senior Panel Counsel

ORDER

Heard the learned Senior Counsel for the petitioner and the learned Senior Panel Counsel for the respondents.

2. The petitioner is aggrieved by the impugned Assessment order dated 13.08.2021 for the Assessment year 2018-2019. The impugned

order has been passed in accordance with Section 144B of the Income Tax Act, 1961 as in force from 01.04.2021 read with E-Assessment Scheme, 2019 which was in force prior to the aforesaid date. The petitioner appears to have inherited shares which were held in petitioner's father's name in Larsen and Turbo Limited. The shares that were purchased by their father during his life time were sold on various dates during the first and fourth week of April 2017 for the total sale consideration of Rs.10,78,75,699.11/- by the petitioner along with his siblings. The total number of 301,206 shares that were sold were of Larsen and Turbo Limited.

3. The petitioner appears to be a regular assessee and therefore liable to be pay tax on the capital gains made from the sale of shares inherited from his father. The petitioner was issued with two notices dated 14.12.2020 and 02.02.2021 both under Section 142(1) of the Income Tax Act, 1961. The petitioner also responded to them on 13.01.2021 and 10.02.2021.

4. Thereafter, the petitioner was issued with a Show Cause Notice on 22.04.2021 along with the Show Cause Notice. A Draft Assessment Order was also enclosed with the said Show Cause Notice. The Draft Assessment Order reproduces the response of the petitioner on 13.01.2021 and 10.02.2021 and proposal to re-compute the taxable income of the petitioner as Rs.11,42,38,847/-.

5. Relevant portion of the Draft Assessment Order along with the Show Cause Notice dated 22.04.2021 reads as under:

> 4.The replies furnished by the assessee have been perused and examined. Neither the assessee has filed any documentary evidence in support of his contention that he has received shares from his father nor he has filed any supporting documents in support of sale of shares. In view of these facts and circumstances of the case, amount of Rs.10,77,75,687/- shown as Long Term Capital Gain arising from the sale of shares is treated as income from other source under Section 56 of the Act, 1961 and added to his income.

6. The petitioner was called upon to respond through his registered e-filing account at 23.59 hours on 26.04.2021. The petitioner was specifically called upon either file written reply objecting to the proposed/modification and/or if required the petitioner could request for

a personal hearing so as to make oral submissions or present his case after filing of written reply. On approval of the request, personal hearing was to be conducted through Video Conferencing. In case, no response was received within the given time and date, the Assessment was to be finalized as per the Draft Assessment Order.

7. The petitioner also responded to the same on 26.04.2021 and also the petitioner has uploaded an affidavit from his mother which has been now extracted in the impugned order.

8. The learned Senior Counsel for the petitioner would submit that the impugned Assessment order is liable to be quashed as there is total non application of mind as it has been passed without following the principles of natural justice. It is further submitted that if the petitioner was given an opportunity to explain the case, the proposal would have been dropped. Instead, the impugned Assessment Order has been passed in a pre-determined manner.

9. The learned Senior Panel Counsel for the respondents has also drawn attention to the decision of the Hon'ble Supreme Court in the case of ***Commissioner of Income-Tax*** Vs. ***D.P.Sandu Bros. Chembur (P) Ltd*** reported in [2005] 142 taxman 713 (SC), wherein, the Court held that as follows:

> 15.Section 56 provides for the chargeability of income of every kind which has not to be excluded from the total income under the Act, only if it is not chargeable to income-tax under any of the heads specified in Section 14 items A to E. Therefore, if the income is included under any one of the heads, it cannot be brought to tax under the residuary provisions of Section 56.

Hence, it is submitted that on this count, the impugned order is liable to be quashed on merits.

10. Defending the impugned order, the learned Senior Panel counsel for the respondents submits that the impugned order is well reasoned and requires no interference. He further submits that writ petition is therefore liable to be dismissed. It is submitted that issue has attained finality, as the petitioner has not filed a Statutory Appeal against the impugned order. That apart, it is submitted that the petitioner has not

replied to the show Cause Notice cum Draft Assessment order dated 22.04.2021.

11. The petitioner had merely uploaded an affidavit of his mother which is not sufficient. It is further submitted that petitioner ought to have uploaded a proper reply/representations to the draft Assessment order cum Show Cause Notice dated 22.04.2021 in absence of the proper response from the petitioner.

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

13. The operative portion of the impugned order reads as under:

> 6.Mere filing of the affidavit does not prove that shares (which were sold by the assessee) were transferred by his mother in favour of her son A.v.Kishore (assessee). In this support no documentary evidence has been furnished by the assessee. In his reply dated 10.02.2021 he has stated that the shares were received from his late father and in his reply dated 10.02.2021 (furnished on 16.03.2021) that he has received shares from his father as per agreement amongst assessee and other legal herein 2015. In absence

> of any documentary evidence in support of his contention, the explanation of the assessee has no considerable force.
>
> 7.In view of the above facts and circumstances of the case amount of Rs.10,77,75,687/- shown as long term capital gain arising from sale of shares is treated as income of the assessee from other sources under Section 56 of the Income Tax Act, 1961 and added to his income.

14. The petitioner has failed to give a proper response to the Show Cause Notice cum Draft Assessment order dated 22.04.2021. In absence of a proper reply, the respondent could not be blamed. Whether the respondents are entitled to make additions to re-compute the taxable income of the petitioner as Rs.11,42,38,847/- to demand the differential tax of Rs.5,42,16,995/- cannot be decided under Article 226 of the Constitution of India.

15. The proper remedy for the petitioner is only to file a Statutory Appeal before the Appellate Commissioner under Section 246 of the Income Tax Act, 1961. The petitioner has instead filed this writ petition within the time period prescribed for filing a Statutory Appeal.

16. Considering the above, Court is inclined to dispose this writ petition by giving liberty to the petitioner to file a Statutory Appeal before the Appellate Commissioner within a period of 30 days from the date of receipt of a copy of this order.

17. The petitioner is also given liberty to file appropriate application before the respondents for stay of recovery proceedings in accordance with Section 220(6) of the Income Tax Act or in the alternative ask for waiver in accordance with the relevant circular of the Board. The petitioner shall file the Appeal before the Appellate Authority and the application before the concerned Authority either for waiver/or for stay as the case may be, within a period of four weeks from the date of receipt of a copy of this order. Pending disposal of such application, the respondent/Income Tax Department, recovery proceedings shall be kept in abeyance.

18. This writ petition is disposed of with the above observations. No costs. Consequently, connected writ miscellaneous petition is closed.

08.08.2023

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

1.The Additional/Joint/Deputy/Assistant Commissioner of Income Tax/Income Tax Officer,
National Faceless Assessment Centre,
Income Tax Department,
Ministry of Finance,
Room No.401, 2nd Floor, E-Ramp,
Jawaharlal Nehru Stadium,
Delhi – 110 003.

2.The Deputy Commissioner of Income Tax,
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