IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2023

CORAM

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

W.P.No.19105 of 2023 &
WMP.Nos.18364 & 18367 of 2023

Kamal V Shahri ... Petitioner

Vs.

1. The Principal Commissioner of
   Income Tax,
   O/o. The Principal Commissioner
   of Income Tax,
   Room No.410, Main Building,
   IV Floor, No.121, Mahatma Gandhi
   Road, Nungambakkam,
   Chennai 600 034.
2. The Additional/Joint/Deputy/Assistant
   Commissioner of Income Tax,
   Income Tax officer,
   National Faceless assessment Centre,
   Delhi
3. The Income Tax Officer,
   Corporate Ward – 6(2),
   Room No.707, 7th Floor,
   Wanaparti Block,
   No.121, Mahatma Gandhi Road,
   Nungambakkam, Chennai 600 034. ...

Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records on the file of the 1st respondent passed in Order u/s.264 in PAN BCGPK1166C, DIN and order No.ITBA/REV/F/REV7/2022-23/1051629891(1), Ay 2015-16 dated 30.03.2023 along with the reassessment order passed by the 2nd respondent in PAN BCGPK1166C, DIN ITBA/AST/S/147/2021-22/1035670806(1), AY 2015-16 dated 17.09.2021 and quash the same as illegal, contrary to provisions of the Act, contrary to records, against the principles aod natural justice and fair play.

For Petitioner : Mr. Pramod Kumar Chopda
Senior Counsel for
Mr. P. Prithvi Chopda

For Respondents : Mr. R.S.Balaji,
Senior Standing Counsel assisted by
Mrs.S.Premalatha, Jr.Standing Counsel

ORDER

This Writ Petition is filed by the petitioner challenging the order dated 30.03.2023 passed by the 1st respondent, confirming the ex-parte reassessment order dated 17.09.2021 passed by the 2nd respondent in respect of Assessment Year 2015-16. In this writ petition, the petitioner also challenges the ex-parte reassessment order dated 17.09.2021 passed by the 2nd respondent.

2. The facts of the case are as follows;

(i) The petitioner herein is one of the Directors of M/s. Shabanesa International Pvt. Ltd. He filed his return of income for the Assessment Year 2015-16 on 30.09.2015 and it was revised on 05.08.2016. Later, by virtue of section 147 of the Income Tax Act (hereinafter referred as 'Act'), the Assessing Officer reopened the assessment proceedings based on the information that the petitioner has received property share for a consideration which is less than the aggregate fair market value of the property by an amount exceeding Rs.50,000/-. Subsequently, a notice under Section 142(1) of the Act was issued to the petitioner to furnish particulars regarding the details of shares allotted to petitioner by M/s.Shabanesa International Pvt. Ltd. during FY 2014-15.

(ii) As the petitioner failed to furnish the particulars sought for in the notice issued under Section 142(1) of the Act, he was issued with a show cause notice on 11.08.2021 calling upon him to show cause as to why the difference amount of Rs.1,09,75,206/- should not be added back to his income u/s.56(2)(vii) of the Act and assessment be made accordingly. As there was no compliance from the petitioner, the 2nd respondent, vide re-assessment order dated 17.09.2021, treated the amount of Rs.1,09,75,206/- as income from other sources and added back the same to the total income of the petitioner. Aggrieved over the same, the petitioner moved an petition u/s.264 of the Act, seeking revision of the order passed by the 2nd respondent stating that no shares were actually allotted to the petitioner by M/s. Shabanesa International Pvt. Ltd., during FY 2014-15, but shares were allotted at face value at the time of incorporation in FY 2013-14. Therefore, the petitioner was asked to clarify the basis on which the amount of Rs.2,28,85,000/- as on 31.03.2015 is appearing in the books of accounts of M/s. Shabanesa International Pvt. Ltd as securities premium without any related shares. Since no reply or clarification was filed by the petitioner in respect to the above, the 1st respondent, vide its *ex parte* order dated

30.03.2023 confirmed the re-assessment order dated 17.09.2021 passed by the 2nd respondent.

(iii) In this writ petition, the petitioner challenges both the re-assessment order dated 17.09.2021 and the *ex parte* order dated 30.03.2023, confirming the re-assessment order dated 17.09.2021.

3. The learned Senior counsel appearing for the petitioner was that the respondent has wrongly treated the security premium of Rs.2,28,85,000/- as appearing in the books of accounts of M/s. Shabenesa International Pvt. Ltd., for the financial year ending 31.03.2015 as shares were allotted to the petitioner during AY 2015-16 (FY 2014-15). The petitioner has not received any shares during the AY 2015-16 (FY 2014-15) and the same has not been disclosed in the petitioner's books of accounts, hence the proceedings under section 148 of the Act were initiated. The assessing officer, in the impugned re-assessment order, added a sum of Rs.1,09,75,206/- on the ground that the petitioner was allotted 3300 shares of Rs.10/- each by M/s.Shabanesa International Pvt. Ltd. during the FY

2014-15 for Rs.1,10,08,206 and treated it as income from other sources after deducting Rs.33,000 from the same.

4. He further submitted that the petitioner has not invested any money towards the security premium as shown in the books of accounts of the company, however, the assessing officer has taken into consideration of the same figure as the security premium paid to the petitioner and share holder of the company which includes the petitioner and another person and considered the said amount has not been disclosed in the books of accounts of the petitioner. Therefore, the said income was treated as income from other sources.

5. The main contention of the petitioner was that the petitioner was not at all paid any amount towards security premium, but in the books of accounts of the company, the above value of asset has been wrongly stated as security premium account instead of showing as amount payable to K.Vijaykumar on takeover of his proprietorship business in the books of

accounts of the company. The aforesaid amount only represents the amount due and payable to Mr.K.Vijayakumar for the value of assets minus liabilities on account of takeover of business of M/s.Shabanesa International Pvt. Ltd. and not as share premium.

6. However, when this Court posed a question as to when this amount was returned to said Mr.K.Vijayakumar, the learned Senior counsel appearing for the petitioner is not in a position to answer the same about the amount of refund. In the event, if there is any refund, definitely it should have been reflected in the books of accounts, but the above said stand was not supposed to have been taken by the petitioner before the respondent authorities concerned. Even while passing the order under section 264 of the Act, an opportunity of personal hearing was provided, wherein, the authorised representative of the petitioner appeared before the authorities on 09.03.2023 and when the authorities asked for a clarification with regard to reflection of amount of Rs.2,28,85,000/- as security premium in the books of accounts as on 31.03.2015, the representative of the petitioner sought

for time till 13.3.2023 and when the matter was adjourned to the said date, no reply or clarification has been furnished by the petitioner. Since no reply or clarification has been forthcoming from the petitioner, the impugned order dated 30.03.2023 confirming the re-assessment order dated 17.09.2021 came to be passed. The learned counsel for the petitioner has also raised an issue that sufficient opportunity of personal hearing was not provided to the petitioner before passing the order impugned.

7. The learned senior standing counsel appearing for the respondents would submit that the security premium amount was shown in the balance sheet which was received only from the petitioner and another share holder of the company. In the company, there were two share holders and these two share holders form part of the Directorship of the company and they are the only persons to sign the balance sheet. Therefore, he contended that the petitioner cannot take a different stand before this Court as if the security premium is liable to be paid only to one Mr.K.Vijaya Kumar who is ex-proprietor, when he did not take such a stand before the respondent

authorities concerned while availing opportunity of personal hearing. He further submitted that now only for the first time, the petitioner has taken such a stand before this Court. Therefore, he submitted that the Writ Petition is devoid of merits and the same is liable to be dismissed.

8. I have given due consideration to the submissions of the learned senior counsel for petitioner and the learned senior standing counsel for the respondents and perused the entire materials available on record.

9. In the present case, the specific case of the petitioner is that no share premium was allotted to him by the Company during Financial Year 2014-15 but only shares were allotted at the face value at the time of incorporation in FY 2013-14 and the amount reflected in the books of the company, i.e .Rs.2,28,85,000/- has nothing to do with the petitioner's allotment of 3300 shares at par for a sum of Rs.33,000/- at the time of incorporation of the company in FY 2013-14 and thereby, the Assessing Officer committed a factual error in assessing the so called share premium in

the assessment for AY 2015-16. It is also the case of the petitioner that on 30.03.2015, the company had taken over the proprietorship business of K.Vijaykuar for a sum of Rs.2,22,83,000/-, however, by mistake the value of asset was shown as security premium account instead of showing as amount payable to K.Vijay Kumar in the books of the company. However, it is pertinent to note that to substantiate the stand taken by the petitioner, no material has been produced before this Court.

10. On a perusal of the balance sheet of the company viz., M/s.Shabanesa International pvt. Ltd.,, it is seen that the petitioner and one Mr.K. Vijay Kumar are the only Directors of the company and in the said company, there are only two share holders, one is petitioner and another person is one Mr.K.Vijay Kumar. Further, in the balance sheet, the petitioner who is one of the Directors, joined with other share holder Mr.K.Vijay Kumar, who is also a Director of the Company, has signed the Balance Sheet, which shows that they are the responsible persons for filing the returns of of their company as on 31.03.2015. The Balance Sheet is

for the period from 26.09.2013 to 31.03.2015, wherein, it was referred the security premium as follows:-

	Reserves and Surplus	*For the period from 26.09.2013 to 31.03.20215*
i.	**Securities Premium Account** Opening balance Add: Premium on shares issued during the year Closing balance	 -- 2,22,83,000 2,22,83,000
ii.	**General Reserves** Opening balance Add: Transfer from P & L Closing balance	 - - -
Iii	**Surplus/(Deficit) in Statement of Profit and Loss** Opening balance Add: Current year surplus/(Deficit) Closing balance	 (1,30,017) (1,30,017)
	Total	**2,21,52,983**

From the above, it is seen that under the column 'Reserves and Surplus' in sub clause (i) under the caption “Securities Premium Account”, an amount of Rs.2,22,83,000/- has been shown towards 'Premium on shares issued during the year' i.e. from 26.09.2013 to 31.03.2015. Since there are only two share holders, there is no possibility for the company to receive any amount towards premium on shares from any other person apart from the said two share holders. As on date of passing the impugned order, the shares have been issued to only two persons, one is petitioner, and another one is, Mr.K.Vijay Kumar.

11. At this juncture, the learned Senior counsel for the petitioner submitted that even if it is assumed that the Security premium was received for the Assessment Year 2015-16, the respondent ought not to have initiated the proceedings as it is pertaining to the FY 2013-14, since the company was formed on 26.09.2013. However, in this regard, the petitioner has not produced any material to show as to when the premium on shares was paid, whether it was paid at the time of incorporation of the company or in the subsequent year. But it has been reflected in the consolidated balance sheet for the period from 26.09.2013 to 31.03.2015. Therefore, the assessing officer has taken the view that this share premium was paid in the

FY i.e., 31.03.2015 between 01.04.2015 and 31.03.2015. When such being the case, this Court is of the view that the premium on shares was credited to the petitioner and since the petitioner failed to disclose the said amount in his books of accounts, the present impugned proceedings have been rightly initiated and the Assessing Officer has rightly come to the conclusion that the amount received is only towards premium on shares by the company.

12. However, the learned Senior counsel submitted that they have filed RoC certificate wherein the petitioner has shown that only a sum of Rs.33,000/- has been paid . In the present case, proceedings were initiated under sections 147 and 148 of the Act against the petitioner for having not disclosed his income. It would be construed that the petitioner has not revealed the correct details of income while filing the various returns before the Registrar of Companies. It is up to the Registrar of Companies to take action against the company and its Directors for not disclosing proper details of income to the authorities concerned.

13. On a perusal of the impugned order dated 30.03.2023, it appears that the respondent has provided an opportunity of personal hearing, but the petitioner herein has not at all availed the same and failed to provide any reply or clarification as sought for by the respondents. Even subsequently, the representative of the petitioner appeared before the authorities, however, he also did not file his reply or clarification and in such circumstances, the impugned order came to be passed. Therefore, this Court does not find any infirmity in the re- assessment order dated 17.09.2021 and also the final order dated 30.03.2023, confirming the re-assessment order dated 17.09.2021 passed by the respondents.

14. In the result, this writ petition is dismissed confirming the impugned orders dated 17.09.2021 and 13.03.2023. No costs. Consequently, the connected miscellaneous petitions are closed.

19.12.2023

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Index:Yes/No
Internet:Yes/No
To

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KRISHNAN RAMASAMY, J.

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