IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2023
Coram

The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.Nos.5068 & 5072 of 2022
and
W.M.P.Nos.5182 & 5191 of 2022

1. Mahaveer Bhandari ...Petitioner in W.P.No.5068 of 2022
2. Lalitha Bhandari ...Petitioner in W.P.No.5072 of 2022

Vs.

1. Assistant Commissioner of Income Tax,
Non-Corporate Circle 7 (1)
121, Mahatma Gandhi Road,
Chennai.

2. The Joint Commissioner of Income Tax,
Non-Corporate Range 7
121, Mahatma Gandhi Road,
Chennai.

3. Additional/Joint/Deputy/ Assistant Commissioner,
of Income Tax Income-Tax Officer,
National e-Assessmen Centre, Delhi.

...Respondents 1 to 3 in both W.Ps.

Prayer in W.P.No.5068 of 2022:-

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for records on the file of the respondents and to quash the impugned order in PAN AADPB8777A dated 13.12.2021 in DIN & Letter No.ITBA/AST/F/17/2021-22/1037725457(1) passed by the third respondent along with impugned notice under section 148 of Income Tax Act, 1961 in PAN No.AADPB8777A dated 30.03.2021 in DIN & Notice No.ITBA/AST/S/148/2020-21/1031979283(1) issued by the first respondent for the assessment years 2016-17.

Prayer in W.P.No.5072 of 2022:-

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for records on the file of the respondents and to quash the impugned order in PAN AABPL7053K dated 20.12.2021 in DIN & Letter No.ITBA/AST/F/17/2021-22/1037953073(1) passed by the third respondent along with impugned notice under section 148 of Income Tax Act, 1961 in PAN No.AABPL7053K dated 26.03.2021 in DIN & Notice No.ITBA/AST/S/148-2020-21/1031804464(1) issued by the first respondent for the assessment years 2016-17.

For Petitioner in both W.Ps : M/s.NV.Lakshmi

For Respondents in both W.Ps. : Mr.B.Ramanakumar
Senior Standing Counsel

COMMON ORDER

The challenge in both the Writ Petitions is to the notices issued by the first respondent under Section 148 of the Income Tax Act, 1961 (for short, the Act) dated 30.03.2021 and 26.03.2021, for reopening the assessments and the consequential orders passed by the third respondent dated 13.12.2021 and 20.12.2021, whereby, the objections filed by the petitioners were rejected and reopening assessment proceedings have been considered as valid.

2. Since a common issue arise for consideration in both the Writ Petitions, they were heard together and disposed of vide this common order.

3. The petitioners herein, who are an assessee on the files of the respondent-Department, under the provisions of the Act is before this Court, by way of present Writ Petitions, being aggrieved by the re-opening of the assessments for the Assessment Year 2016-17.

4. The learned counsel appearing for the petitioners would submit that already the petitioners'/assessees' files were selected for scrutiny and the Assessing Officer have also passed assessment orders under Section 143 (3) of Act dated 30.12.2018, and aggrieved against the said orders, the petitioners have preferred Appeals before the Commissioner of Income Tax (Appeals) and when the Appeals were pending, the first respondent passed the impugned orders of reopening of the assessments and issued notices under Section 148 of the Act, which is within a period of four years from the end of the relevant assessment year 2016-17. Therefore, the learned counsel submitted that the impugned orders are liable to be set aside on the ground, once the Assessing Officer determined the issues and formed an opinion and passed assessments orders, it is not open to him to reopen the assessment files with respect to the same issues in respect of same assessment years, however, with a slight variations under different heads, by stating that 'he had reason to believe that the petitioners income chargeable to tax has escaped assessment within the meaning of Section 147 of the Act', since, the issues are no more res integra.

5. The learned Senior Standing Counsel for the respondent-Department also fairly admitted that in the present cases, the issues pertaining to the determination of Capital Gains and Non Compete Fees have already been decided by the Assessing Officer in respect of AY 2016-17 and Assessment Orders were also passed, and therefore, he submitted that appropriate orders may be passed.

6. Heard M/s.NV.Lakshmi, the learned counsel appearing for the petitioner and Mr.B.Ramanakumar, learned Senior Standing Counsel for respondents.

7. At the first instance, it would be beneficial to refer to the Assessment Orders passed by the Assessing Officer dated 30.12.2018, in respect of petitioner in W.P.No.5068 and 5072 of 2022 respectively which are mentioned below under the caption 'A' and 'B':-

'A'

"Subject to the above, the assessment under

Section 143 (3) for Assessment Year : 2016-17 is completed as under :

Returned Income incl of LTCG : Rs.17,40,10,730/- of Rs.17,33,79,982

Add

1. Difference on account of LTCG
(88450194-9939998) : Rs.7,85,10,196/-
2. Non compete Fees u/s 28
(va) as discussed above : Rs.99,39,998/-

Total Assessed Income : Rs.26,24,60,924/-
Rounding off : R.26,24,69,920/-

Interest charged under Section 234A of Rs.24,48,996/-, 234B of Rs.1,09,21,167 and 234C of Rs.14,70,509/-. Tax payable as per the Computation Form showing calculation of tax and interest is attached herewith forming a part of this order. Demand notice enclosed. Penalty notice under Section 274 r.w.s. 271(1)(c) issued separately".

'B'

"Subject to the above, the assessment under Section 143 (3) for Assessment Year : 2016-17 is completed as under :

Returned Income incl of LTCG : Rs.17,44,15,020/- of Rs.17,45,30,803

Add

1. Difference on account of LTCG
(88984303-10000000) : Rs.7,89,84,303/-
2. Non compete Fees u/s 28
(va) as discussed above : Rs.1,00,00,000/-

Total Assessed Income : Rs.26,35,15,106/-
Rounding off : R.26,35,15,110/-

Interest charged under Section 234A of Rs.61,73,170/-, 234B of Rs.1,38,03,724/- and 234C of Rs.14,86,604/-. Tax payable as per the Computation Form showing calculation of tax and interest is attached herewith forming a part of this order. Demand notice enclosed. Penalty notice under Section 274 r.w.s. 271(1)(c) issued separately".

8. Thus, on a perusal of the above Assessment Orders, it is clear that the Assessing Officer has determined the issues pertaining to 'Capital Gains and Non Compete Fees in case of both the petitioners in respect of the Assessment year 2016-17, and now, by virtue of the impugned notices dated 30.03.2021 and 26.03.2021, the respondent-Assessing Officer wanted to make re-assessment by assigning reasons that the petitioners income chargeable to tax has escaped assessment within the meaning of Section 147 of the Act" and that the petitioners have earned income from other sources, which would fetch more tax than the capital gains.

9. This Court is of the view that, once the issues with respect to which, assessment was done, outstanding tax amount was determined, and opinion was formed, it is not open to the Assessing Officer to reopen the assessment files, with regard to the same assessees for the same AY 2016-17, to form a different opinion, inasmuch as, the issues are no more res integra and any subsequently opinion formed would be non-sequitur. In the present case, for the AY 2016-17, the Assessing Officer has already decided the issues pertinent to 'Capital Gains' and 'Non Compete Fees' and determined the tax amount with respect to said two issues and formed an opinion and passed assessment orders, and hence, it is not open to the first respondent-Assessing Officer to reopen the assessment files with respect to the same assessees (petitioners herein) for very same assessment year to form a different opinion, as the same would be a non-sequitur. Hence, this

Court is inclined to quashed the impugned orders.

10. Accordingly, both the Writ Petitions are allowed, the impugned orders dated 30.03.2021 and 26.03.2021, as well as the consequential orders, dated 13.12.2021 and 20.12.2021 are quashed. No costs. Consequently, connected Miscellaneous Petitions are closed.

30.10.2023
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Index : yes/no
Neutral Citation : yes/no

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Krishnan Ramasamy,J.,

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