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W.P.No.34991 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: **03.01.2023**

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.34991 of 2022

&

W.M.P.Nos.34439 and 34430 of 2022

in

W.P.No.34991 of 2022

Mr.V.S.Dhandapani & Son
4, Anderson Road, Habibullah Avenue
Greams Road, Chennai – 600 006
(Now at) No.30, 6th Cross Street
Shenoy Nagar, Chennai – 600 030

Represented by its Partner
Shri D. Subrahmanyam

.. Petitioner

Vs.

1. The Income Tax Officer
Non-Corporate Ward 15(1)
Wanaparthi Block, 121 M.G.Road
Chennai – 600 034

2. National Faceless Assessment Circle
Income Tax Department

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari to call for the records on the file of the 1st respondent and quash the impugned order under Section 148A(d) of the Income Tax Act, 1961 in PAN AADFV6769Q dated 31.07.2022 in



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DIN & Order No.ITBA/COM/F/17/2022-23/1044368969(1) and the consequential notice under Section 148 of the Act dated 31.07.2022 in DIN ITBA/AST/M/148_1/2022-23/1044377664(1) for the assessment year 2014-15.

For Petitioner : Mr.Vikram Vijayaraghavan
of M/s.Subbaraya Aiyar Padmanabhan
& Ramamani (Law Firm)

For Respondents : Mr.A.P.Srinivas
Senior Standing Counsel (Income Tax)

ORDER

Captioned matter arises under the 'Income Tax Act, 1961' ('IT Act' for the sake of brevity, convenience and clarity).

2. Mr.Vikram Vijayaraghavan, learned counsel of M/s.Subbaraya Aiyar Padmanabhan & Ramamani (Law Firm) for the writ petitioner is before this writ Court.

3. Short facts (shorn of granular particulars) are that the subject matter of the captioned writ petition pertains to 'Assessment Year 2014-15' [hereinafter 'said AY' for the sake of convenience and clarity]; that the writ petitioner filed a return of income on 21.07.2014 qua said AY admitting a gross total income of Rs.6,02,970/-; that thereafter the first respondent issued a notice dated 30.06.2021 under Section 148 of IT



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Act stating that there are reasons to believe that income chargeable to tax has escaped assessment; that such income has escaped assessment is within the meaning of Section 147 of IT Act; that the first respondent called upon the writ petitioner to file return of income within 30 days; that thereafter notice under Section 142(1) being notice dated 15.11.2021 calling upon the writ petitioner to furnish accounts and documents which were set out therein was issued; that under such circumstances, as Section 148A of IT Act kicked in on and from 01.04.2021 vide Finance Act, 2021, a notice dated 18.05.2022 under Section 148A(b) was issued; that first respondent called upon the writ petitioner-assessee to file objections for the purpose of legal drill under Section 148A(d) of IT Act; that in response to the above, writ petitioner uploaded some material; that the writ petitioner requested the first respondent to supply material; that such exchange of correspondence continued; that writ petitioner made an application dated 23.08.2022 to examine the details of recommendations and information relied upon by the approving authority; that first respondent by communication dated 17.11.2022 furnished copy of what is described as 'insight information' and approval copy of competent authority; that thereafter an 'order dated 31.07.2022 bearing reference DIN & Order No.ITBA/COM/F/17/2022-23/1044368969(1) under



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Section 148A(d)' and a even dated 'notice under Section 148 bearing reference ITBA/AST/S/91/2022-23/1044377736(1)' also came to be issued [hereinafter 'impugned order' and 'impugned notice' respectively for the sake of brevity, convenience and clarity]; that the writ petitioner has filed the captioned writ petition assailing the impugned order and impugned notice primarily on the ground that Dissemination Note between the authorities of the Department i.e., *inter se* department wrongly refers to cash deposits as Rs.169921/- lakhs instead of Rs.1,699.21 lakhs.

4. Mr.A.P.Srinivas, learned Senior standing counsel for Income Tax accepted notice for the respondents.

5. Owing to the nature of the matter, considering the acute angle on which the challenge to the impugned order turns and grounds on which challenge to impugned notice are predicated, captioned main writ petition was taken up with the consent of both sides.

6. Learned counsel for writ petitioner in his campaign against impugned order and impugned notice pitched his arguments or in other words, predicated his submissions primarily on the aforementioned figures qua cash deposits i.e., as to whether it is Rs.169921 lakhs or



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Rs.1699.21 lakhs. This is captured in paragraph 16 of the synopsis, which reads as follows:

'16. On perusal of the Insight information furnished it can be seen that the total of Debit Transactions and Credit Transactions in INDUS IND BANK ACCOUNT No 200999217025 is Rs.17,46,74,984/- and Rs.17,47,80,901/- respectively which corroborates and confirms the claim of the Petitioner. However, the Dissemination Note between the authorities of the department has wrongly refers to cash deposit of Rs.169921 lacs instead of Rs.1699.21 lacs. Thus an error committed by department on its part can not result in reopening of the assessment relating to the Petitioner which is an error in law and in facts.'

7.Learned counsel also drew the attention of this Court to a communication dated 21.07.2022 bearing reference F.No.2/Re-opening u/s.147/NCR-10/2022-23 from the Additional Commissioner of Income Tax wherein the Additional Commissioner has opined that this is not a fit case to issue notice under Section 148 but nine days later on 30.07.2022, Principal Chief Commissioner of Income Tax who is 'Specified Authority' placing reliance on order of Hon'ble Supreme Court dated 04.05.2022 in *Ashish Agarwal's* case (*Union of India Vs. Ashish Agarwal*) [to be noted, Ashish Agarwal case is reported in **2022 SCC OnLine SC 543**] held that this is a fit case for issuing notice under



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Section 148 of IT Act. This according to the writ petitioner is a dichotomy.

8. At the outset, it has to be made clear that *Ashish Agarwal's* case is one where notices were issued ignoring or not noticing the amendment to IT Act qua Section 148A which kicked in on and from 01.04.2021 vide Finance Act, 2021. It is submitted that Section 148A is a codified form of what was known as *GKN Driveshafts* principle being the ratio laid down by Hon'ble Supreme Court in *GKN Driveshafts (India) Ltd., Vs. Income-Tax Officer and others reported in (2003) 259 ITR 19*.

9. Before proceeding further, this writ Court reminds itself that Chapter XIV of IT Act captioned 'PROCEDURE FOR ASSESSMENT' in terms of working principle is in two parts. In effect, it consists of Sections 139 to 158. Upto Section 143, it is either inquiry before assessment or assessment. After Section 143, it is a post assessment scenario. As regards Section 147 which we are concerned with, this Writ Court is of the considered view that Section 147 which deals with income that is chargeable with tax that has escaped assessment is controlled by Sections 148 to 153.



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10. This Writ Court with the above fundamental first principle in mind has also taken note of the fact that the codified form of **GKN Driveshafts** principle is Section 148A which kicked in on and from 01.04.2021 as already alluded to supra.

11. In response to the submissions made by learned counsel for writ petitioner-assessee, learned Revenue counsel drew the attention of this Court to the order made under Section 148A(d) i.e., the impugned order and more particularly paragraph 4 thereat, which reads as follows:

' 4. I have considered the reply of assessee and the same is not acceptable. The assessee had filed the return of income within due date showing a turnover of Rs.134.02 crores. On perusal of the current account No.200999217025 in Indusind bank, it is seen that the total credit for the whole year under consideration was Rs.17.49 crores. But the High Value Cash deposit aggregating to Rs.169921 lakhs as against the total turnover declared by the assessee of Rs.134.02 crores followed by immediate utilization of proceeds coupled with transactions not matching with declared profile of the customer needs to be verified further.'

12. Learned Revenue counsel also drew the attention of this Court to the uploading made by the Assessee and a scanned reproduction of the same as placed before this Court by the writ petitioner-assessee is



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as follows:

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Acknowledgement Number: 637045901280322

e-Proceedings Response Acknowledgement

INCOME TAX DEPARTMENT

PROCEEDING DETAILS				
PAN/TAN	AADFV6769Q			
Case	V.S. DHANDAPANI & SON			
Financial Year	2013-14			
Assessment Year	2014-15			
Proceeding Name	Issue Letter			
Notice/Communication Reference ID	100048790969			
Notice Section				
Description	[ITSA] Issue Letter			
Notice Issue Date	18-May-2022			
Due Date for Submission				
Communication Sent date				
Document Reference ID	ITRA/COM/F/17/2022-23/1043063967(1)			
RESPONSE SUBMITTED				
Remarks	Please refer to your letter com communication V.S. DHANDAPANI and SON 4 Anderson Road/Habibullah Avenue Greame Road Chennai 600006, Tamil Nadu India PAN AADFV6769Q Assessment Year 2014-15 Dated: 18-05-2022 DIN and Letter No ITRA COM F 17 of 2022-23 -1043063967-1 Sir Subject: Subsequent proceedings with reference to section 148A b consequence to Hon ble SC Order dated 04-05-2022 - Letter directing us to respond before 30-11-2022. In response thereto we submit that: ROI for AY 2014-15 was already filed by us as per attachment along with financial statements. As per the above communication you have referred to Rs.149921 lakhs as deposits in bank account. As per P and L Account, our sales were Rs.134022 lakhs and balance account for sales realisations, loans received etc. We are reconciling the figures for the difference for which we require another 15 days time as spelt out in para 8.1 sub para 5 under sec 148A b of the Act. Accordingly we will be filing our detailed reply before 11-6-2022 which extended time may therefore be accorded to as per Board's Instruction No. 1 of 2022 dt 11-5-2022.			
Hash * Value Of Remarks	e02222ec0270b5442729dcfb60e787aad135716ff3d8614062ee72e3d17b625a5			
No	Attachment Name	Description	Size(bytes)	Hash * value of Attachment



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Sl No	Attachment Name	Description	Size(bytes)	Hash * value of Attachment
		detailed schedules		1e3e2a7087bfbb21b12a1f205643dca5
2	VSD Son ITR 14 15 Form_pdf_24292023 1210714 (1).pdf	ROI for AY 14 15	244520	689280a9c1bf135e1940c28e713af52466f96576835de1ee359bf66edb9b1b
3	VS D BS and P&L AY 2014-2015 (1).pdf	Balance sheet / statement of affairs along with detailed schedules	2551400	c1b4bc5d9483e53899a4cc6647681a861e3e2a7087bfbb21b12a1f205643dca5
4	VSD Sons Return Ack Pdf_2429202312107 14 (1).pdf	ROI filed ack	58829	f198b250928a9a6ca8a4c153cb81db7168dcdfeb43b287c0e1ac3f601f41b615

This is a system generated acknowledgement and does not require signature

* Hash ; This value will uniquely identify the uploaded files and remarks.



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INDIAN INCOME TAX RETURN ACKNOWLEDGEMENT				Assessment Year 2014-15	
[Where the data of the Return of Income in Form ITR-1 (SAHAJ), ITR-2, ITR-3, ITR-4S (SUGAM), ITR-4, ITR-5, ITR-6, ITR-7 transmitted electronically with digital signature]					
Name V.S.BHAKTAPANI AND SON			PAN AADFV5769Q		
Flat/Door/Block No 36,	Name Of Premises/Building/Village		Form No. which has been electronically transmitted ITR-3	Status Firm	
Road/Street/Post Office 4th Cross Street,	Area/Locality Shree Nagar,				
Town/City/District Chennai,	State Tamil Nadu	Pin 600039	Original or Revised ORIGINAL		
Designation of AO(Ward/Circle) B Range - XIII			Date(JOIN/YY) 21-07-2014		
E- filing Acknowledgement Number 34292031210734					
1 Gross total income			2	602979	
2 Deductions under Chapter-VI-A			3	90000	
3 Total Income			3a	0	
3a Current Year loss, if any			4	183228	
4 Net tax payable			5	17782	
5 Interest payable			6	296010	
6 Total tax and interest payable			6a		
7 Taxes Paid			7a	17778	
a Advance Tax			7b	17778	
b TDS			7c	0	
c TCS			7d	17782	
d Self Assessment Tax			7e	183228	
e Total Taxes Paid (Tax 7a+7c+7d)			7f	183228	
8 Tax Payable (5-7e)			8	0	
9 Refund (7e-6)			9	0	

This return has been digitally signed by D. Subramanyam to the capacity of Partner

Using PAN: AADFV5769Q from IP Address: 183.65.168.75 on 21-07-2014 at Chennai.

Doc ID No. & name: 15030718101000Code Solution CA 2011-3, CD12.3.4.31-101, SHRC Software, STREET-1, Indirapuram, S.G Road, Ahmedabad.
ST-010001, STD 2.3.4.31-000014, CD-000000000000

DO NOT SEND THIS ACKNOWLEDGEMENT TO CPC, BENGALURU



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13. Adverting to the above uploading, learned Revenue counsel pointed out that even according to the writ petitioner-assessee sales as per the P&L account was Rs.1,34,022 lakhs. Furthering his submissions in this direction, learned Revenue counsel submitted that writ petition is clearly premature as Section 148 drill which was preceded by Section 148A is now under way and the writ petitioner has filed the writ petition by going into the realm of surmises and conjectures i.e., that the order will certainly go against the writ petitioner. It was submitted that the writ petition is not entertainable a) because it is premature and b) because it is in the realm of surmises and conjectures.

14. Responding to the above, learned counsel for writ petitioner-assessee submitted that reference to the figure Rs.1,34,022/- qua P & L Accounts as the sales figure is a typographical error. If that be so and if there is an error in the decimal, it is open to the writ petitioner-assessee to pursue the matter further and that certainly is not a ground for interference in writ jurisdiction. Likewise, as regards the letter of the Additional Commissioner dated 21.07.2022, it is clearly an inter-office communication where the Additional Commissioner has written to the Principal Chief Commissioner of Income Tax, who admittedly is the



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'Specified Authority' within the meaning of Section 148A(d) read with Section 151 of IT Act. Therefore, this 21.07.2022 letter is not from the 'Specified Authority' and it is an inter-office mail. The Specified Authority on 30.07.2022 has clearly opined that it is a fit case for issuing notice under Section 148. That puts an end to the argument predicated on the letter dated 21.07.2022 from the Additional Commissioner to the Principal Chief Commissioner of Income Tax.

15. Learned counsel for writ petitioner submitted that once the order is made and once Section 148 legal drill is carried to its logical end, if it goes against the writ petitioner, the writ petitioner will have to make 20% deposit for stay. This Court refrains itself from expressing any opinion on this aspect of the matter as it is premature and as rightly pointed out by learned Revenue counsel, it is in the realm of surmises and conjectures and in any event, this submission does not persuade this Court to interfere at this stage. The argument that post logical end of Section 148 legal drill if the writ petitioner comes to this Court alternate remedy rule will be put against the writ petitioner is going beyond the realm of surmises and conjectures also. It all has to be dealt with on a case to case basis and it is clearly premature to interfere at this stage.

This Court is of the considered view that Section 148A is a codified



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mechanism that has been put in place for the benefit of the assessee and if that is stretched to the levels to which the writ petitioner wants to carry the matter, the very objective of a pre-notice drill qua Section 148 read with section 147 will become counter productive.

16. In the light of the discussion and dispositive reasoning thus far, this Court is not inclined to interfere qua impugned order and impugned notice, both dated 31.07.2022.

17. Before concluding, though obvious it is made clear that Section 148 legal drill shall proceed without being impeded by this order and it will not in any manner serve as impetus either.

18. Sequitur is captioned writ petition fails and the same is dismissed. Consequently, captioned WMPs are also dismissed. There shall be no order as to costs.

03.01.2023
(1/2)

Neutral Citation: Yes/No
Index: yes/no
gpa



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To

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Non-Corporate Ward 15(1)
Wanaparthi Block, 121 M.G.Road
Chennai – 600 034
2. National Faceless Assessment Circle
Income Tax Department



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M.SUNDAR, J.,

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