BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 30.11.2022

Pronounced on : 07.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.(MD).No.2630 of 2022

and

W.M.P.(MD).Nos.2327, 2328, 2330 and 10950 of 2022

Shree Nagalinga Vilas Oil Mills,
123, Katchery Road,
Virudhunagar - 626 001,
Represented by its Partner,
M.Mathavan ... Petitioner

Vs.

Income Tax Officer,
Ward 3, Income Tax Office - Virudhunagar,
Madura Coats Compound,
Railway Feeder Road,
Virudhunagar-626 601. ... Respondent

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records in notice dated 31.03.2021 issued by the Respondent bearing DIN & Notice No.ITBA/AST/F/S/148/2020-21/1032118755(1) for AY 2015-16 for PAN:AANFS8563P and all consequential proceedings thereto including order dated 27.01.2022 bearing ITBA/AST/F/17/2021-22/1039112643(1) passed by the Respondent for

AY 2015-16 for PAN:AANFS8563P, and to quash the same as arbitrary, illegal and unlawful and to consequently forbear the Respondent from in any manner reassessing the petitioner's income under Section 147 of the Act for AY 2015-16.

For Petitioner	:	Mr.R.V.Easwar Senior Counsel For Mr.K.Govindarajan
For Respondent	:	Mr.N.Dilip Kumar Standing Counsel

ORDER

The writ petition is filed challenging the notice dated 31.03.2021 relating to the assessment year 2015-2016 and the order disposing the objection submitted by the assessee against reopening of the assessment under Section 147 of the Income Tax Act, 1961, (hereinafter referred to as the “Act”)

2. The impugned proceeding is challenged primarily on the following grounds:

a) That the impugned proceedings is nothing but mere change of opinion and thus bad for want of jurisdiction.

b) That the impugned proceeding is made beyond the period of four years thus it is necessary for the assessing officer to find that there was failure on the part of the petitioner assessee to disclose fully and truly all material particulars. The above aspect is a condition precedent for invoking the power under Section 147 read with 148 of the Act beyond 4 years. Failure to render a finding on the same would vitiate the entire proceeding.

3. Brief facts:

i) The petitioner is a partnership firm. The petitioner had filed its return of income on 25.11.2015 for the assessment year 2015-16 declaring an income of Rs.48,010/- and tax of Rs.16,248/-.

ii) The petitioner's return was selected for scrutiny. During scrutiny, the petitioner was called upon to provide documents/ details, which were submitted. Admittedly, the details so submitted included the petitioner's bank account. Thereafter, the petitioner appeared before the assessing officer and made oral submissions. The assessment was completed under Section 143 (3) of the Act on 03.10.2018 by accepting the return of income filed by the Petitioner. The petitioner's case was referred under Section 92CA to the Transfer pricing officer for computation of Arms Length price. No adverse inference was drawn in the Transfer Pricing proceeding.

iii) Thereafter, the petitioner was issued notice under Section 148 of the Act on 31.03.2021 stating that there are reasons to believe that income chargeable to tax for the assessment year 2015-16 had escaped assessment. The petitioner responded vide letter dated 14.4.2021 inter-alia requesting to furnish reasons for reopening the assessment completed under Section 143 (3) of the Act.

iv) The respondent issued notice dated 30.06.2021 under Section 143 (2) and furnished the following as reasons for issuing notice under Section 147 and 143(2) of the Act:

> "*As per information of the ADIT, (Inv) Tirunelveli the assesee is involved huge amount of cash transaction in Bank of India Virudhunagar, in account number 826620110000018 to the tune of Rs. 7,81,93,92,066/- during the Assessment year 2015-16.*
>
> *On verification of the return details for the Assessment year 2015-16 the Firm has admitted an amount of Rs.36,81,67,179/- as Gross receipts. But the firm's deposited amount (Rs.7,81,93,92,066/-) is higher than gross receipts*"

v) The petitioner submitted its reply / objection vide letter dated 02.07.2021, stating that the petitioner did not have any bank account in Bank of India, Virudhunagar Branch nor any Bank Account Number bearing 826620110000018. A confirmation letter from the Bank of India, Virudhunagar Branch was also submitted by the petitioner which confirmed that the petitioner did not have any account with Bank of India during the assessment year 2015-16. The impugned order has been passed rejecting the objection filed by the petitioner.

It is this order of rejection which is under challenge before this Court in the present writ petition *inter alia* on the ground that assessment is sought to be reopened on the basis of reasons that are non existent and thus stands vitiated.

4. With regard to the petitioner's objection that they are neither holding any bank account with Bank of India nor any account bearing number No.826620110000018, a counter has been filed in response, wherein it was submitted as under:

"*7. Insofar as the contention of the petitioner in GROUNDS B of the affidavit it is submitted that on the verification of the firm's* *contention, it is seen on the verification details of the insight portal bearing account number 826620110000018 (Mentioned in the said Notice U/S. 143(2) dated 30.06.2021) of Bank of India, it is ascertained that the said account belongs to the Sri Murugan Shanthi whose PAN is AFTPS9671K and this case also has been re-opened U/S.147 of the Act. The same account number and name of the Bank were wrongly pasted in the firm's Case.*

8. However the total transaction of Rs.7,81,93,92,066/- is correctly mentioned in the above said notice. The firm has not objected or pointed out its huge transaction made in the AXIS bank bearing account number 910020004111580 during the period from 01.04.2015 to 31.03.2015."

5. The learned Senior Standing Counsel appearing for the Respondent submitted that the writ petition ought not to be entertained against the order rejecting the objection by placing reliance on the decision of the Hon'ble Supreme Court in the case of ***Anshul Jain v. CIT*** reported in ***2022 SCC OnLine SC 1756.***

6. On hearing both sides, I am of the view that the impugned proceedings suffers from error apparent on the face of the record. Reliance placed on *Anshul Jain's* case by the learned Senior Standing Counsel appearing for the Respondent is misconceived. The above

judgment was a case were it was found as a matter of fact that the objections were considered. However, in the instant case this Court finds that objection have been rejected without even applying its mind to factors that are relevant and more importantly the facts stated in the counter would clearly show that the reasons furnished for reassessment suffers from error apparent on the face of the record inasmuch as admittedly reference was made to the wrong Bank and Account Number, while proposing reassessment on the basis of alleged deposits to the said account thereby vitiating the entire proceeding under Section 147 of the Act.

7. Yet another reason which would warrant interference is the fact that the Respondent has in its counter set up a case rather material particulars, different from the reasons given for reassessment, which is impermissible. It is well settled that public orders must be tested on the basis of what is stated in the order and subsequent counter affidavit cannot improve the order as held by the Hon'ble Supreme Court in the following decisions:

a) <u>Commissioner of Police v. Gordhandas Bhanji, 1951 SCC 1088:</u>

"***9. ...*** *We are clear that public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."*

b) <u>*Mohinder Singh Gill v. Chief Election Commr., 1978 1 SCC 405:*</u>

*"**8.** The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. ......*

Orders are not like old wine becoming better as they grow older."

8. Applying the above decisions to the present case, this Court is inclined to set aside the impugned order, on the ground that the reasons furnished suffers from error apparent nor can the counter be called in aid to improve the impugned order. However, this would not preclude the Respondent from exercising the power of assessment, if there are reasons / circumstances which would warrant such exercise. Needless to state

that the Respondent, shall if it chooses to initiate proceeding would do so in compliance with the procedure contemplated / provided under the Income Tax Act. If the Respondent chooses to exercise his powers of re-assessment the petitioner is at liberty to raise all grounds that may be available to them, including the grounds raised in this writ petition which has not been dealt with inasmuch as I have found that the impugned order suffers from error apparent on the face of the record and thus unsustainable.

9. With the above direction, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

07.02.2023

Index: Yes/No
Speaking order/Non speaking order
Neutral Citation: Yes / No

shk

MOHAMMED SHAFFIQ, J.

shk

To:

Income Tax Officer,
Ward 3, Income Tax Office - Virudhunagar,
Madura Coats Compound,
Railway Feeder Road,Virudhunagar-626 601.

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