BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :01.06.2023

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THE HONOURABLE MS.JUSTICE P.T.ASHA

W.P.(MD)No.10935 of 2023
and
W.M.P.(MD).Nos.9575 & 9576 of 2023

Errulan Thangamani ...Petitioner

Vs.

The Income-tax Officer,
Income Tax Department,
Ward2(1) Trichy,
Main Building, Williams Road,
Cantonment Trichy, Trichy,
Tamil Nadu-620 015. ...Respondent

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the4 records in DIN No.ITBA/AST/F/148A/2022-23/1051826322(1) dated 31.03.2023 on the file of the respondent for the Assessment Year 2016-17 and the consequential notice in DIN No.ITBA/AST/S/148-1/2022-23/1051826486(1) dated 31.03.2023 on the file of the respondent for the Assessment Year 2016-17 and quash the same.

For Petitioner :Mr.V.S.Jayakumar
Senior Counsel for
:Mr.S.B.Kayvin Prince

For Respondent :Mr.N.Dilipkumar
Senior Standing Counsel

ORDER

Aggrieved by the order passed by the respondent dated 31.03.2023, as well as the consequential notice dated 31.03.2023 for the assessment year 2016-17, the petitioner has filed this writ petition.

2. It is necessary to briefly allude to the facts of the case for more fully appreciating the case on hand.

3. It is the case of the petitioner that he had not filed the return of income for the assessment year 2016-17. He had no income chargeable to tax. While so, he was surprised to receive the notice dated 24.03.2023 from the respondent for an enquiry under Section 148A(a) of the Income Tax Act, 1961, (herein after called as Act), for the assessment year 2016-17 stating that the petitioner had carried out his financial transaction for some of

immovable property worth exceeding Rs.50,00,000/- , for which, TDS has been deducted, with regard to this, the petitioner was asked to furnish the information and particulars. Thereafter, the petitioner was in receipt of a notice under Section 148A(b) of the Act dated 02.03.2023, calling upon the petitioner to show cause as to why the notice under Section 148 should not be issued. The petitioner had immediately sent a reply by letter dated 21.03.2023 sought for two weeks time to collect the details. He had denied the allegation of the respondent that he had received consideration for the sale of immovable property and that he had not earned any taxable income under the Act.

4. It is the case of the petitioner that one P.S.Chandra, who had executed a power of attorney in her favour dated 20.02.2013 had purchased the property at Door No.6 & 7, Thanjavur Bye-Pass Road, Trichirappalli. The petitioner was authorized to administer and sell the property on her behalf. It is the case of the petitioner that he had not received a single penny under the sale deed and that he had only acted as a power agent.

5. However, the respondent had passed the impugned order dated 31.03.2023 stating that the petitioner had not give the details about the sale consideration and the sale of immovable property, when the sale consideration was a sum of Rs.2,64,49,830/- in the financial year 2015-16. Since no explanation was received, the respondent has followed it up with a notice under Section 148 to re-open the assessment as nearly a sum of Rs. 50,00,000/- chargeable to tax for the assessment year 2016-17 as escaped assessment. The petitioner would question the very jurisdiction of the respondent to issue the impugned order and the consequential notice. Therefore, the petitioner has come forward with the present writ petition.

6. The learned counsel for the petitioner would submit that the petitioner was not given adequate opportunity to putforth their case and consequently the impugned order came to be passed. He must be given a fresh opportunity under the notice under Section 148 of the Income Tax Act has to necessarily be quashed.

7. Per contra, Mr.N.Dilipkumar, learned Senior Standing Counsel would submit that several opportunities have been provided to the petitioner to submit proper details about the sale. Further a reading of the sale deed would clearly show that the sale consideration was to the tune of Rs. 2,67,17,000/- and the petitioner's TDS statement would indicate that sum of Rs.2,67,17,000/-. The respondent has stated that there is no proof to show that this amount has been paid to P.S.Chandra the principal.

8. Heard the learned counsel appearing on either side.

9. As stated by the learned counsel for the respondent the sale deed would indicate that a sum of Rs.2,64,49,830/- had been received as a sale consideration. The petitioner's assessment shows that the TDS was also paid towards the sale consideration. Therefore, the respondent has only sought for a clarification from the petitioner and it is well open to the petitioner to set right the query of the respondent. Without doing so, the petitioner has rushed to this Court.

10. Considering the fact that the notice is only a preliminary one. I see no reason to quash the notice dated 31.03.2023 issued by the respondent and the consequential notice dated 31.03.2023. Accordingly, the writ petition is dismissed. However, the respondent shall permit the petitioner to produce evidence both oral and documentary to prove their case. The petitioner is directed to produce evidence within a period of 15 days from the date of receipt of a copy of this order. The respondent shall dispose of the same within a period of four weeks thereafter. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

01.06.2023

NCC :Yes/No
Internet :Yes/No
Index :Yes/No
sbn

To

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P.T.ASHA, J.

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