



W.P.(MD) No.10873 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.06.2023

CORAM

THE HONOURABLE Ms.JUSTICE P.T.ASHA

**W.P.(MD) No.10873 of 2023
and
W.M.P.(MD) Nos.9533 and 9536 of 2023**

Packirisamy Senthilkumar

... Petitioner

/vs./

Government of India,
Ministry of Finance,
Income Tax Department,
Office of the Income Tax Officer,
Ward 1, Thanjavur.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the entire records of the respondent contained in DIN and Notice No.ITBA/AST/F/148A/2022-23/1051299169(1) dated 25.03.2023 for Assessment year 2016-2017 for PAN No.GMIPS5765N and to quash the same as without jurisdiction, arbitrary, unjust, unlawful and consequently forbear the respondent or its superiors, subordinates, agents, from re-assessing the petitioner's income for the Assessment Year 2016-17 under Section 147 of the Income Tax Act 1961.



W.P.(MD) No.10873 of 2023

WEB COPY

For Petitioner : Mr.A.G.Sathyannarayana

For Respondent : Mr.N.Dilip Kumar
Senior Standing Counsel

ORDER

The petitioner has invoked the extraordinary jurisdiction of this Court seeking the issue of a Writ of Certiorarified Mandamus calling for the entire records of the respondent contained in DIN and Notice No.ITBA/AST/F/148A/2022-23/1051299169(1) dated 25.03.2023 for the assessment year 2016-2017 for PAN No.GMIPS5765N, quashing the same as without jurisdiction, arbitrary, unjust and unlawful and consequently forbearing the respondent from reassessing the petitioner's income for the assessment year 2016-17 under Section 147 of the Income Tax Act, 1961.

2.It is the case of the petitioner that he is a Non-Resident Indian residing in Singapore and having his source of income only from Singapore. He has been a resident of Singapore since the year 1996 and a regular tax payer there. The petitioner also has a permanent account number in India. It is his case that during the assessment year 2016-2017, he had purchased immovable properties to the



W.P.(MD) No.10873 of 2023

WEB COPY
tune of Rs.90,00,000/-, for which TDS was also deducted and Form-26QB was filed. It is the case of the petitioner that he has not filed his return of income under the Income Tax Act, 1961 (*herein after referred to as Act*).

3.While so, the petitioner had received a clarification letter dated 10.02.2023 calling upon him to reply along with documentary evidence stating that a sum of Rs.1,80,00,000/- has escaped assessment for the assessment year 2016-2017. The petitioner would submit that he has submitted a detailed reply on 23.02.2023 along with the documentary evidences, despite which the respondent had issued a notice under Section 148A(b) of the Act dated 04.03.2023 proposing to issue a notice under Section 148 of the Act to assess/reassess the income under Section 147 of the Act. The petitioner has once again submitted a detailed reply dated 13.03.2023 reiterating the earlier reply and substantiating the reason as to why he had not filed his return of income for the assessment year 2016-2017. However, without considering the same, the respondent had chosen to issue the impugned order under Section 148A of the Act dated 25.03.2023 thereby compelling the petitioner to move this Court.



W.P.(MD) No.10873 of 2023

WEB COPY

4. Heard the learned counsel appearing for the petitioner, who would submit that the orders have been passed without affording an opportunity to the petitioner to submit his response. It is his contention that both in the clarification letter dated 10.02.2023 and the notice under Section 148A(b) of the Act dated 04.03.2023, the respondent had only contended that the information received by them would show that the petitioner had purchased the immovable property for Rs.90,00,000/- and as per the TDS statement, the amount credited was Rs. 90,00,000/- and therefore, a sum of Rs.1,80,00,000/- had escaped assessment. However, in the impugned order, the respondent has gone on to deal with the loan account, the employment details, the salary certificate, etc of the petitioner and the petitioner was never called upon to explain the above or given time to produce the relevant documents. He would therefore submit that on this ground, the impugned order has to necessarily be set aside.

5. *Per contra*, Mr.N.Dilip Kumar, learned Senior Standing Counsel for the respondent would submit that the petitioner has not given any details as to how a sum of Rs.22,50,000/- had been sourced by him. Further, he has not given the details to show his employment and that he has earning the income through such



W.P.(MD) No.10873 of 2023

employment. He would submit that the document namely, the assessment submitted in Singapore is of the year 2015 and is not of the relevant assessment year. He would further submit that no prejudice would be caused to the petitioner, particularly when the respondent has only proceeded to ask clarifications. He would therefore submit that there is no necessity to interfere with the impugned order of the respondent.

6.Heard the learned counsels appearing on either side.

7.The very basis, on which the clarification letter has been issued by the respondent, appears to be flawed for the following reasons:-

Admittedly, the petitioner has purchased the property for a sum of Rs.90,00,000/-. It is not the case of the respondent that the petitioner has purchased two properties for a sum of Rs.90,00,000/- each. On the contrary, even according to the clarification letter dated 10.02.2023 and the impugned order, the respondent has calculated Rs.90,00,000/- as a sale consideration and a sum of Rs. 90,00,000/- which has been reflected in the TDS statement shown as payment of consideration for the purchase of immovable property as a separate item, which



W.P.(MD) No.10873 of 2023

added together has given the figure of Rs.1,80,00,000/-, which the respondent claims to be the income that has escaped assessment.

8.The notice to the petitioner has been based only for the aforesaid reasons, whereas the impugned order would further add new reasons for the order. The petitioner had not been given an opportunity to answer and explain the same. Therefore, taking into account the fact that the very basis of the demand is erroneous and the impugned order proceeds to give new reasons, which the petitioner has not been given an opportunity to defend, the impugned order is set aside.

9.In fine, the Writ Petition is allowed. The notice issued under Section 148A(b) of the Act in Notice No.ITBA/AST/F/148A/ 2022-23/1051299169(1) dated 25.03.2023 shall be treated as an additional show cause notice and the petitioner shall submit his explanation to this additional show cause notice within a period of two weeks from the date of receipt of a copy of this order. The respondent shall proceed to pass orders after giving an opportunity of personal hearing to the petitioner within a period of 8 weeks thereafter. However, there



W.P.(MD) No.10873 of 2023

shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Speaking : Yes / No
NCC : Yes / No
Internet : Yes / No
Index : Yes / No

02.06.2023

mm



WEB COPY



W.P.(MD) No.10873 of 2023

P.T.ASHA, J.

mm

W.P.(MD) No.10873 of 2023

02.06.2023