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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	:	01.12.2022
Pronounced on	:	24.02.2023

CORAM

THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

W.P.(MD).No.23189 of 2022
and
W.M.P.(MD).Nos.17284 & 17285 of 2022

D.N.Vikraman
S/o.V.V.D.Nithiyanandam
Represented by Legal heir
Smt.V. Lakshmi Prabha ... Petitioner

Vs.

The Assistant Commissioner of Income Tax,
Office of the Assistant Commissioner of Income Tax,
Central Circle-2,
Income Tax Staff Quarters Campus,
Kulamangalam Main Road, Meenambalpuram,
Madurai 625 002. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the Notice under Section 148 of the Income Tax Act, 1961 dated 03.05.2021 in PAN: AAZPV2953J having DIN: ITBA/AST/S/148/2021-22/1032763846(1) for Asst.Year 2016-17 was passed by the respondent and quash the same as illegal.

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For Petitioner : Mr.Ravikannan

For Respondent : Mr.N.Dilip Kumar
Standing Counsel

ORDER

The writ petition is filed challenging the notice dated 03.05.2021 issued under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as the "Act") for the assessment year 2016-17. The present writ petition has been filed by the wife of Shri. D.N.Vikraman in her capacity as the legal heir of the deceased assessee. The Writ petition is filed on the premise that the notice dated 03.05.2021 was issued under Section 148 of the Act in the name of Shri.D.N.Vikraman who had passed away on 06.09.2019. The challenge is primarily on the premise that notice on a dead person is invalid/illegal.

2. It may be relevant to set out briefly the facts as there has been developments subsequent to the notice dated 03.05.2021 and thus the very maintainability of this writ petition has been questioned by the learned Senior Standing Counsel for the Respondent.

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3. Shri.D.N.Vikraman was one of the Directors of M/s.VVD & Sons Pvt. Ltd., and earned income by way of salary and interest income. He had filed his Income Tax Returns for the assessment year 2016-17 on 17.03.2017. The order of assessment was made under Section 143(3) read with Section 153 C of the Act vide order dated 29.12.2017, resulting in a demand of Rs. 29,11,880/-. The assessee thereafter passed away on 06.09.2019. A notice for reassessment came to be issued under Section 148 of the Act in the name of late D.N.Vikraman on 03.05.2021. In response, his son and legal heir Shri.Ajay.N.V. had vide letter dated 07.05.2021 requested the Respondent herein to provide the reasons for the proposed reassessment. Thereafter, a notice dated 06.06.2022 came to be issued to the assessee represented by legal heir Shri.Lakshmi Praba wherein, reference was made to the judgment of the Hon'ble Supreme Court in the case of *Ashish Agarwal* while stating that the said notice dated 06.06.2022 shall be deemed to be a notice issued under Clause (b) of Section 148 A of the Act as amended by the Finance Act, 2021. It was further stated that on 04.05.2022 a notice was issued in the name of the assessee in terms of Section 148 A of the Act. The notice was however returned with an endorsement "Assessee not Known". Thereafter on finding that the assesse/deceased had passed

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away the notice dated 06.06.2022 was issued in the name of his wife Shri Lakshmi Prabha. In response to the above, the following objections were *inter alia* raised by the legal heir /wife of the assessee:

a) That the notice dated 03.05.2021 was issued in the name of a deceased person though the particulars of his death was updated in the Income Tax portal.

b) The notice though deemed to be one under Section 148 A of the Act is invalid inasmuch as it is issued beyond the period of limitation of 3 years stipulated under Section 148 A of the Act.

c) The income stated to have escaped is less than Rs.50 lakhs which is below the threshold monetary limit stipulated for initiation of reassessment under Section 148 A of the Act.

4. An additional reply was also submitted by the petitioner vide his letter dated 25.07.2022 wherein, the petitioner had submitted that the proceedings invoking Section 148A of the Act is invalid as "no information" has been relied upon with regard to the alleged income that has escaped.

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5.The Respondent vide order dated 28.07.2022 rejected the objections of the petitioner in response to the notice issued under Section 148 A of the Act by placing reliance upon the judgment of the Hon'ble Supreme Court in the case of *Ashish Agarwal.*

6. The learned Senior Standing Counsel for the Respondent would submit that the challenge to the notice dated 03.05.2021 does not survive any longer in view of the subsequent order rejecting the objections filed by the petitioner vide order dated 28.07.2022.

7. This Court finds merit in the submission of the learned Senior Standing Counsel for the Respondent, inasmuch as the challenge to the notice dated 03.05.2021 would no longer survive, in view of the subsequent notice/orders of the Respondent under Section 148A dated 06.06.2022 and 28.07.2022 which is not challenged. Hence the writ petition challenging the notice dated 03.05.2021 is dismissed. This would not preclude the petitioner from challenging the order dated 28.07.2022 or any other order / proceeding made on the basis of the notice dated 03.05.2021 *inter alia* raising the plea of voidity, in view of the notice dated 03.05.2021 having been served on a

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dead person.

8. In view of the above, the writ petition is dismissed. Consequently, connected miscellaneous petitions are closed. No costs.

24.02.2023

Index: Yes/No
Internet: Yes/No
Speaking order/Non speaking order

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To:

The Assistant Commissioner of Income Tax,
Office of the Assistant Commissioner of Income Tax,
Central Circle-2, Income Tax Staff Quarters Campus,
Kulamangalam Main Road, Meenambalpuram,
Madurai 625 002.

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<u>MOHAMMED SHAFFIQ, J.</u>

shk

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