IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.10.2024

CORAM

THE HON'BLE **MR JUSTICE C. SARAVANAN**

W.P.No.1263 of 2022
and
W.M.P.Nos.1368 and 1372 of 2022

M/s.L.D.Venkataraman (HUF),
Represented by its Coparcener Thiru.L.V.Srinivasan
aged 60 years,
Venkata Udayam, Old.No.12, New No.27,
Vijayaraghava Road, Thyagaraya Nagar
Chennai – 600 017, Tamil Nadu ...Petitioner

Vs.

1.The Income Tax Officer,
National Faceless Assessment Circle,
Income Tax Department,
Ministry of Finance,
Room No.401, 2nd Floor, E-Ramp,
Jawaharlal Nehru Stadium,
Delhi – 110 003.

2.The Assistant Commissioner of Income Tax,
Non-Corporate Circle - 7(1),
Room No.608, Wanaparthy Block,
VI Floor, No.121, Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034.

3.The Principal Commissioner of Income Tax, Chennai – 1,
Room No.701, Wanaparthy Block,
VII Floor, No.121, Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034.

4.The Sub-Registrar (T.Nagar),
No.27/14, Veterinary Hospital Road,
Fanepet, Nandanam,
Chennai – 600 035. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorari to call for the records in DIN & Letter No:**ITBA/AST/F/17/2021-22/1038503666(1)** dated 06.01.2022 on the file of the 1st Respondent relating to the AY 2015-16.

For Petitioner : Mr.G.Baskar

For Respondent : Mr.Prabhu Mukunth Arun Kumar
Standing Counsel

ORDER

Heard Mr. G.Baskar, learned counsel for the Petitioner and Mr.Prabhu Mukunth Arun Kumar, learned counsel for the Respondent.

2. In this writ petition, the petitioner has challenged impugned notice dated **30.03.2021** issued under **Section 148** of the **Income Tax Act, 1961** (in short 'Act') and the consequential speaking order passed on **06.01.2022** by the respondent in the ratio laid down by the Hon'ble Supreme Court in **GKN Drive**

Shafts (India) Ltd. V. **Income Tax Officer** [2003(259 ITR 19)].

3. The facts that are relevant for the disposal of the case are that the petitioner had sold a property on **30.10.2014** for a total sum of Rs.45,45,00,000/-, on the same date, the petitioner also purchased a property for a sum of Rs.20,11,79,447/-, which includes the cost of the land purchased and the immovable property namely a residential house in T.Nagar, Chennai.

4. The petitioner filed a return of income on **31.08.2015** declaring a total income of Rs.1,12,35,418/-. The return was assessed after notice under **Section 143 (2)** of the Act was issued on **19.09.2016** followed by another notice under **Section 142 (1) r.w.s 129** of the Act on **12.09.2017**. The assessment order was ultimately passed under **Section 143 (3)** of the Act, whereby the return filed by the petitioner on **31.08.2015** was accepted by admitting to the taxable income of the petitioner as 1,18,16,740/-. The four-year period had expired on **31.03.2020**. The reasons forthcoming for reopening the assessment as communicated to the petitioner reads as under: -

> *"The assessee filed its return of income for AY 2015-16 on 31.08.2015 with a total income of Rs.1,12,16,740/-. Assessment was completed under Section 143 (3) accepting the returned income. One verification of record, it was ascertained that,*

the assessee had purchased a property of 6 grounds and 561.5 Sq.ft. for Rs.18 crores (Land Value Rs.17,95,38,000/- and the building value Rs.4,62,000/-) i.e.,approximately @ Rs.12,000/- per sq.ft. But it is seen from the TN Reginet, the Guideline value of the said property is @ Rs.16,000/- per sq.ft. stating it as commercial type III. Since the assessee had purchased the property worth of Rs.23,93,84,000/-(14,961.5 sq.ft @ Rs.16,000) for a lesser value of Rs.17,95,38,000/-, the difference of Rs.5,98,46,000/- as per Section 56 (2) (vii) of the IT Act, has escaped assessment."

5. The respondent has over-ruled the objection of the petitioner vide impugned order dated **06.01.2022** with the following observations:-

"Since the assessee had purchased the property worth of Rs.23,93,84,000/-(14,961.5 sq.ft @ Rs.16,000) for a lesser value of Rs.17,95,38,000/-, the difference of Rs.5,98,46,000/-, as per Section 56 (2) (vii) of the IT Act, has escaped assessment. The assessee vide his objection dated 11.10.2021 has contended that all material in connection with the purchase of property was made available during the original assessment proceeding to the assessing officer. However from records, it is noticed that the assessee has not declared correct value of the property as discussed above in his return of income as well as during the entire assessment proceedings before the assessing officer. Hence, it is clear that there is the failure on the part of the assessee to disclose fully and truly all material/facts necessary for the assessment during the assessment proceeding."

6. The challenge to the impugned order dated **06.01.2022**, is twofold, as there is invocation of machinery under **Section 148**, for the purpose of re-assessment under the **Income Tax Act, 1961**, was beyond the period of limitation. It is submitted that there has been no failure on the part of the petitioner to disclose the income in the return filed on **31.08.2015**, and therefore, it is submitted that there is no basis for over-ruling the objection that was completed on **26.10.2017** under **Section 143 (3)** of the Act.

7. That apart, learned counsel for the petitioner would submit that the only basis for re-opening of the assessment was based on the purported guideline value of the property at Rs.16,000/- Per. Sq. Ft.

8. The learned counsel for the petitioner, has drawn attention to the extracts downloaded from the web-portal of the Registration Department of Tamil Nadu and submits that during the period **01.04.2012** to **08.06.2017**, that is the period in dispute, the property at Vijayaraghavachari Road has been specified at Rs.16,000/- Per. Sq. Ft.. However, the classification of the land has been given as Commercial Special Type-III.

9. It is submitted that under **Section 47 (A)** of the **Indian Stamps Act, 1899**, it is the Jurisdictional Sub-Registrar who is the Authority specified

therein competent to confirm the guideline value. In this connection, learned counsel for the petitioner has also drawn attention to a letter/certificate issued by the Sub-Registar of Thyagaraya Nagar confirming that the document was registered at Rs.12,000/- Per. Sq. Ft. for the land mentioned in the special document namely Doc.No.2625 of 2014.

10. That apart, learned counsel for the petitioner also submitted that the issue is also answered against the respondent as the impugned proceedings are inspired from change of opinion. In this case, a reference was made to the decision of the Hon'ble Supreme Court in **CIT Vs. Kelvinator of India Ltd.,** [(2010) 320 ITR 561 (SC)]. It is therefore, submitted that the impugned order with over-ruling of objection is liable to be quashed.

11. Further, the learned counsel for the petitioner has also drawn attention to the decision of this Court rendered in **Chinnathambi Rajeswari** Vs. **Assistant Commissioner of Income Tax** vide order dated 17.04.2024 in W.P.(MD).No.4155 of 2022, dealing with almost identical case in hand.

12. Learned counsel for the respondent on other hand would submit that **the submission** reopening of the assessment was beyond the normal period of four years, cannot be countenanced, as the last date for issuing notice under

Section 148 of the Act expired on **31.03.2020**. It is submitted that with effect from **24th March 2020**, the country was under a lock-down mode due to outbreak of Covid-19 Pandemic and the Hon'ble Supreme Court had extended the time.

13. Learned counsel for the respondent would also submit that the assessment order that was completed on **26.10.2017**, is silent on the guideline value and the difference between the value adopted for the computation of the stamp duty and the guideline value is to be taxed.

14. Thus, it is submitted that the TOLA Ordinance, 2020 and TOLA Act, 2020 was passed, extending the period of limitation by the Parliament itself. Therefore, it is submitted that notice was issued on **30.03.2021** cannot be said to be time barred, therefore. It is, therefore, submitted that notice issued was in time. It is further submitted that it is open for the Department to issue a notice by extending the period for re-opening the assessment for alleged failure on the part of the assessee to disclose a material document for completing the assessment is not relevant.

15. The learned counsel for the respondent would further submit that the assessment that was completed on **26.10.2017** itself makes it clear. It is pursuant to a notice dated **19.09.2016** under **Section 143 (2)** of the Act and was issued for only a limited scrutiny. It is submitted that even the assessment order dated **26.10.2017** clearly adverts to the same and states that the case is selected for limited scrutiny through CASS and therefore, submits that re-opening of the assessment was in order and therefore, the speaking order impugned herein need be interfered with.

16. Having considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondent, the Court is of the view that the impugned order in over-ruling the objection of the petitioner, on the ground of difference, between the purported guideline value of the property at Rs.16,000/- Per. Sq. Ft. is not available as it is inspired due to change of opinion.

17. That apart, the records that have been filed before this Court is Rs.16,000/- Per. Sq. Ft. is for the commercial property and not for residential property. The SRO's letter dated 04.10.2022 confirms that value that was adopted only Rs.12,000/- Per. Sq. Ft. That apart **Section 47 A** of the **Indian**

Stamps Act, 1899, it is the Jurisdictional Registering Officer, who is the competent authority under the **Indian Stamps Act, 1899** to come to a conclusion, whether there was any under valuation or not.

18. If there is under valuation, the property would not have been registered at Rs.12,000/- Per. Sq. Ft. *Prima-facie*, it is clear that the reopening of the assessment is only inspired from change of opinion, as all the materials available for completing the assessment. Impugned order is liable to be set aside in the light of the decision of the Hon'ble Supreme Court in **CIT Vs. Kelvinator of India Ltd.,** [(2010) 320 ITR 561 (SC)].

19. The Hon'ble Supreme Court has made it clear that the power that is to be exercised under **Sections 148** of the **Income Tax Act, 1961** cannot be used for change of opinion as there is no power to review completed assessment.

20. In view of the above reasons, this writ petition stands disposed of. Connected Miscellaneous Petitions are closed. No costs.

15.10.2024

Index: Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case: Yes/No
nst

To:

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