IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2024

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.3488, 29812 & 29819 of 2022
and
W.M.P.Nos.3615, 3620, 29204, 29205, 29213 & 29214 of 2022

Vaaman Associate
Represented by its Partner Mr.P.Karthik
6 BKR Nagar, 2nd Cross Sathy Road,
Gandhipuram,
Coimbatore – 641 012. ... Petitioner in all W.Ps

Vs.

1.The Assistant Commissioner of Income Tax,
Non-Corporate Circle 2,
67-A Race Course Road,
Coimbatore.

2.The Principal Commissioner of Income Tax,
67-A Race Course Road,
Coimbatore. ... Respondents in W.P.No.3488 of 2022

3.The Additional/Joint/Deputy/
Assistant Commissioner of Income Tax/
Income-tax Officer,
National Faceless Assessment Centre,
Delhi.

4.The Assistant Commissioner of Income Tax,
Non-Corporate Circle 2,
67-A Race Course Road,
Coimbatore.

5.The Income Tax Officer,
Non Corporate Ward 2(1),
67-A Race Course Road,
Coimbatore. ... Respondents in W.P.No.29812 of 2022

6.The Income Tax Officer,
Non Corporate Ward 2(1),
67-A Race Course Road,
Coimbatore.

7.The Additional/Joint/Deputy/
Assistant Commissioner of Income Tax/
Income-tax Officer,
National Faceless Assessment Centre,
Delhi. ... Respondents in W.P.No.29819 of 2022

Prayer in W.P.No.3488 of 2022: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records on the file of the first respondent and quash the impugned Notice in ITBA/AST/S/148/2020-21/1031869365(1) dated 29.03.2021 issued under Section 148 of the Income Tax Act for the Assessment Year 2013-14.

Prayer in W.P.No.29812 of 2022: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records on the file of the respondent and quash the impugned order passed by the first respondent under Section 147 read with Section 144 read with Section 144B of the Income Tax Act, 1961, ('Act') in PAN:AAIFV6383R, DIN No.ITBA/AST/S/147/2021-22/1041949324(1) dated 29.03.2022 for the Assessment Year 2013-14.

Prayer in W.P.No.29819 of 2022: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records on the file of the respondents and quash the impugned order passed by the first respondent under Section 271(1)(c) of the Income Tax Act, 1961, ('Act') in PAN:AAIFV6383R, DIN No.ITBA/PNL/F/271(1)(c)2022-23/1045901486(1) dated 23.09.2022 for the Assessment Year 2013-14.

For Petitioner (in all W.Ps) : M/s.N.V.Lakshmi

For Respondents (in all W.Ps) : Dr.B.Ramaswamy
Senior Standing Counsel

COMMON ORDER

By this common order, all these Writ Petitions are being disposed of.

2. W.P.No.3488 of 2022, the petitioner has challenged the Notice dated 29.03.2021 issued under Section 148 of the Income Tax Act, 1961. After the petitioner had filed W.P.No.3488 of 2022, the petitioner had secured an interim order before this Court on 03.03.2022. By the aforesaid order, this Court had permitted the Department, wherein, it has been recorded that the order to be passed was subject to the final outcome of the Writ Petition. The issue was whether prior approval has been obtained under Section 151 of the Income Tax Act, 1961 on 29.03.2021. Thus, the Court permitted the Department to proceed with the Assessment with a rider, that the Assessment order will be subject to the outcome of the Writ Petition challenging the notice dated 29.03.2021, issued under Section 148 of the Income Tax Act, 1961.

3. In the counter that has been filed before this Court in response to W.P.No.3488 of 2022, the respondents have stated as follows:-

> *"6.I humbly submit that since the assessee did not file any Return of Income for the corresponding AY 2013-14, there was escapement of Taxable income in the hands of the assessee. Prior approval of the Pr Commissioner of Income Tax-1, Coimbatore was sought for the issue of Notice under*

Section 148, vide ITNS 10 on 20.03.2020 through proper channel. The Pr Commissioner of Income Tax gave approval for the issue of the notice on 15.06.2020 with a rider that the Notice under Section 148 should not be generated as long as the CBDT's bar on issue of Adverse Communication to assessee was in force."

4. The challenge to the notice issued under Section 148 of the Income Tax Act, 1961 is primarily on the ground that has been issued contrary to mandate of Section 151 of the Income Tax Act, 1961, which reads as under:-

> *"151(1) No Notice shall be issued under Section 148 by an assessing officer after the expiry of a period of four years from the end of the relevant assessment year unless the Principal Chief Commissioner of Chief Commissioner of Principal Commissioner or Commissioner is satisfied, on the reasons recorded by the assessing officer, that it is a fit case for issue of notice."*

5. In support of these Writ Petitions, the learned counsel for the petitioner has placed reliance on the following decisions of the Division Bench of the Bombay High Court in the case of ***Svitzer Hszira (P) Ltd*** Vs. ***Assistant Commissioner of Income-tax, Circle -5(3)(2), Mumbai*** reported in [2022] 135 taxmann.com 136 (Bombay) and ***River Valley***

Meadows and Township (P) Ltd Vs. Deputy Commissioner of Income-Tax, Mumbai reported in [2022] 134 taxmann.com 20 (Bombay).

6. The learned Senior Standing Counsel for the respondents submits that the impugned notice dated 29.03.2021 preceded an approval before the Principal Commissioner of Income Tax, after a communication was sent for such approval under Section 151 of the Income Tax Act, 1961 on 20.03.2020. However, the approval was not sent in view of the communication dated 15.06.2020, which enjoins the Department not to issue any notice, as long as there was a bar under CBDT's on issue of Adverse Communication to the assessee during the outbreak of Covid – 19 Pandemic. It is submitted that *post facto* the approval was also communicated on 17.06.2021 and this is a case where the petitioner has not even filed returns under Section 139 of the Income Tax Act, 1961.

7. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents.

8. In case W.P.No.3488 of 2022 is to be allowed all the other writ petitions are also to be allowed. In case W.P.No.3488 of 2022 is to be dismissed all the other writ petitions are also to be dismissed, as subsequent orders have been passed in the light of the order passed by this Court on 03.03.2022 asking the Department to proceed with the order and the outcome will be subject to the disposal of the Writ Petition challenging the notice dated 29.03.2021 issued under Section 148 of the Income Tax Act, 1961.

9. The language of Section 151 of the income Tax Act, 1961 is clear. Before issuance of a Notice under Section 148 of the Income Tax Act, 1961 an approval has to be obtained, wherever, four years have expired from the end of the relevant Assessment year either from the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner where they are satisfied for the reasons recorded by the Assessing Officer, it is a fit case for issuance of Notice. Ordinarily, the limitation would have expired on **31.03.2020**. In this case, the impugned Notice under Section 148 of the Income Tax Act, 1961 dated 29.03.2021

for the Assessment Year 2013-2014. However, on account of TOLA Act, 2020, the period of limitation stood extended till 30.06.2021. Therefore, the notice that was issued on **29.03.2021** was in time. However, it did not precede an approval under Section 151 of the Income Tax Act, 1961 in view of communication dated 15.06.2020, which enjoins the Department not to issue any notice. *Post facto* approval from the Principal Commissioner or Chief Commissioner as is contemplated under Section 151 of the Income Tax Act, 1961 has been obtained, as it stood during the period in dispute. Therefore, the notice that was issued on 29.08.2021 is liable to be quashed in view of the decision of the Division Bench of the Bombay High Court in the above two cases cited by the learned counsel for the petitioner. Consequently, the Notice issued under Section 148 of the Income Tax has to be quashed. Consequentially, Assessment orders and the penalty orders are impugned in W.P.No.29812 of 2022 and W.P.No.29819 of 2022 also deserve to be allowed.

10. Accordingly, these Writ Petitions stand allowed by quashing the impugned Notices/orders dated 29.03.2021, 29.03.2022 and 23.09.2022 passed by the first respondent. No costs. Consequently, connected writ miscellaneous petitions are closed.

18.11.2024

Index:Yes/No
Internet: Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No
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C.SARAVANAN, J.

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