IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.4384 of 2024 and
W.M.P.Nos.4719 to 4721 of 2024

Divya Dhanapal ...Petitioner

Vs.

1. The Assessment Unit,
Income Tax Department,
National e-Assessment Centre,
Delhi E-Ramp, Jawaharlal Nehru Stadium,
Delhi-110 003.

2.The Income Tax Officer,
Ward 1(1), Salem,
Income Tax Department,
No.3, Gandhi Road,
Salem-636 007.

3.The Principal Commissioner of Income Tax,
Coimbatore, Income Tax Department,
No.63, Race Course Road,
Coimbatore-641 018. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the petitioner on the file of the 1st respondent to quash the impugned order under Section 147 read with Section 144B of the Income Tax Act, 1961 dated 30.01.2024 in DIN:ITBA/AST/S/147/2023-2024/1060248724(1) for the Assessment Year 2019-2020.

For Petitioner : Mr.A.S.Sriraman

For Respondents : Mrs.S.Premalatha,
Junior Standing Counsel

O R D E R

An assessment order dated 30.01.2024 under Section 147 of the Income Tax Act, 1961 (the Income Tax Act) read with Section 144B thereof is the subject of challenge in this writ petition.

2. The petitioner is an income tax assessee and had filed a return of income on 30.08.2019 in respect of assessment year 2019-2020. With regard to the said return, a notice under Section 148A(b) of the Income Tax Act was issued to the petitioner on 10.03.2023. Pursuant thereto, an order under Section 148A(d) was issued on 31.03.2023. Eventually, the assessment order impugned herein was issued on 30.01.2024.

3. Learned counsel for the petitioner invited my attention to the show cause notice dated 05.01.2024. He pointed out that the variation proposed therein relates to the sale of a residential property by the petitioner and her husband. He also pointed out that the said show cause notice refers to the petitioner's reply dated 26.08.2023. As regards the sale of the residential property, the petitioner had stated therein that she originally intended to invest the sale proceeds in another residential unit within the prescribed period of two years. Since she was unable to identify an appropriate residential unit for purchase, she remitted capital gains tax along with interest thereon on 19.10.2021. In spite of such reply, learned counsel submits that the impugned assessment order was issued confirming a variation of Rs.96 lakhs, which is equivalent to the entire sale consideration received by the petitioner and her husband. By referring to the assessment order relating to the petitioner's husband, Gunasekar Ranganathan, learned counsel pointed out that it was accepted therein that the 50% capital gains of Rs.34,22,047/-, after deducting the index cost of acquisition, had been disclosed by the petitioner's husband under the head 'salary'. In these circumstances, learned counsel submits that the variation confirmed in the assessment order is untenable and that interference is warranted.

4. Mrs.S.Premalatha, learned junior standing counsel, accepts notice for the respondents. She submits that the petitioner did not disclose the sale of property in the return of income filed on 30.08.2019. She also submits that the petitioner did not submit a return of income in response to the notice under Section 148 of the Income Tax Act. According to learned standing counsel, the impugned order was issued in these facts and circumstances by confirming the variation in respect of the entire sale consideration.

5. The impugned assessment order refers to the reply issued by the petitioner on 26.08.2023 to the notice under Section 142(1). In the said reply, the petitioner has stated that she was the co-owner of the residential property, which was conveyed by the petitioner and her husband in June 2018. Since the petitioner was unable to identify an appropriate residential property for the investment of the sale proceeds from the sale of the property in June 2018, the petitioner has stated that she remitted the requisite capital gains tax along with interest thereon on 19.10.2021 in respect of her half share of such capital gains.

6. The assessment order dated 30.01.2024 in respect of the petitioner's husband, Gunasekar Ranganathan, is on record. The said assessment order refers to the total sale consideration from the sale of property as Rs.96 lakhs. It also refers to the indexed cost of acquisition being Rs.27,55,906/-, thereby resulting in the aggregate capital gains of Rs.68,44,094/-. The assessing officer accepted that the petitioner's husband included the 50% capital gains of Rs.34,22,047/- in his salary while computing the total income for the relevant assessment year.

7. In light of the above documents, the impugned assessment order, wherein the entire sale consideration of Rs.96 lakhs was brought to tax as short-term capital gains in the hands of the petitioner cannot be sustained.

8. Therefore, the impugned assessment order is quashed and the matter is remanded for reconsideration. The petitioner is permitted to file a reply to the show cause notice dated 05.01.2024 within a maximum period of two weeks from the date of receipt of a copy of this order. Upon receipt thereof, the 1st respondent is directed to provide a reasonable opportunity to the petitioner, including a hearing through

video conference, and thereafter issue a fresh assessment order. For purposes of enabling the petitioner to file a reply, the respondents are directed to provide access to the portal. The above exercise shall be completed within a maximum period of three months from the date of receipt of petitioner's reply.

9. The writ petition is disposed of on the above terms. There will be no order as to costs. Consequently, connected miscellaneous petitions are closed.

04.03.2024

Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

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SENTHILKUMAR RAMAMOORTHY,J.

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