IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2024

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.5032 of 2022
and
W.M.P.Nos.5147 and 5150 of 2022

M/s.Sriram V (HUF),
No.7-AB, Block III, Kences Enclave No.1,
Ramakrishna Street,
T.Nagar,
Chennai – 600 017. ... Petitioner

Vs.

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

2.The Income Tax Officer,
Non Corp Ward – 2(1),
Chennai.

3.The Income Tax Officer,
Non Corp Ward – 1(6),
Chennai. ... Respondents

Prayer: 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 in PAN.AARHS1926C and quash the impugned notice under Section 148 of the Income Tax Act, 1961 in ITBA/AST/S/148/2020-21/1031778935(1) dated 26.03.2021 issued by the 3rd respondent and consequentially quash the proceedings in ITBA/AST/F/17/2021-22/1039869490(1) dated 17.02.2022 passed by the 1st respondent.

For Petitioner : Mr.R.Sivaraman

For Respondents : Mr.B.Ramanakumar
Senior Standing Counsel

ORDER

Both sides are present.

2. The petitioner is before this Court against the Impugned Notice/Communication dated 26.03.2021 issued by the third respondent to reopen the assessment that was completed on 29.12.2017 for the Assessment Year 2015-2016 and the consequential Speaking Order passed by the first respondent on 17.02.2022 overruling the objections of

the petitioner against the reopening of the assessment that was completed on 29.12.2017.

3. The brief facts of the case are that the petitioner along with his mother purchased a flat in Mylapore by investing a total sum of Rs.7,19,44,048/- by registering a Sale Deed on the undivided share on 30.06.2014 and entering into a Construction Agreement with the builder namely M/s.Chaitanya Builders on the same date.

4. The aforesaid amount of Rs.7,19,44,048/- includes taxes leviable under various direct tax enactments (both State and Central).

5. The specific case of the petitioner is that the invocation of machinery under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") on 26.03.2021 for the Assessment Year 2015-2016 was without jurisdiction and therefore the consequential Speaking Order passed by the first respondent on 17.02.2022 is liable to be quashed.

6. Specifically, the learned counsel for the petitioner would submit that out of the aforesaid sum of Rs.7,19,44,048/-, a sum of Rs.2,75,00,000/- was directly paid by the petitioner's mother Mrs.Padma, out of proceeds from the sale of her shares in City Union Bank for a sum of Rs.3,69,84,352.96/-.

7. As far as the 50% share in the property purchased under the aforesaid Sale Deed and Construction Agreement both dated 30.06.2014, the balance amount was paid by the petitioner through loans from M/s.Integrated Enterprises (India) Private Limited in which the petitioner held 29% share.

8. It is submitted that the amount was also re-paid in the same year of its receipt. It is further submitted that the assessment that was completed earlier on 29.12.2017 though was unsuccessfully appealed before the Commissioner of Income Tax (Appeals), thereafter the petitioner had filed further appeal before the Income Tax Appellate Tribunal (ITAT), “B” Bench, Chennai in ITA.No.863/Chny/2022 which came to be disposed by ITAT on 22.02.2023.

9. Learned counsel for the petitioner would submit that the appeal filed by the revenue under Section 260A of the Act before this Court in T.C.A.No.350 of 2023 was also dismissed on 19.10.2024 on account of low tax effect i.e., the monetary policy of the Government.

10. It is submitted that in the notices that preceded the Impugned Notice/Communication dated 26.03.2021, the petitioner was called upon to explain the source of the amount of Rs.3,10,22,424/- which was contributed towards acquisition of the flat being 50% of the amount paid during the Financial Year 2014-2015 (Assessment Year 2015-2016) for a sum of Rs.6,20,44,848/-.

11. The Assessing Officer had considered the explanation given by the petitioner and had added a sum of Rs.3,10,22,424/- as “deemed income” of the petitioner in terms of Section 2(22)(e) of the Act which now stands deleted vide Order dated 22.02.2023 of the Appellate Tribunal in the petitioner's appeal arising out of the aforesaid Assessment Order dated 29.12.2017.

12. It is therefore submitted that in absence of any tangible material available with the respondents, the question of invoking the extended period of limitation under Section 147 of the Act as it stood immediately prior to 01.04.2021 is not available to the respondents.

13. That apart, it is submitted that the Assessing Officer had himself quantified the amount of Rs.7,19,44,048/- in the aforesaid Assessment Order dated 29.12.2017 wherein a part of the amount was during the Financial Year covered by 2014-2015 (Assessment Year 2015-2016) and part of the amount was during the Financial Year covered by 2015-2016 (Assessment Year 2016-2017) as detailed below:-

Date	**Amount (In Rs.)**
16.01.2014	25,00,000
28.06.2014	40,000
	25,40,000
27.06.2014	2,75,00,000
27.06.2014	26,27,664
09.10.2014	56,81,184
31.10.2014	52,47,200
28.11.2014	52,47,200
17.12.2014	52,47,200
19.01.2015	52,47,200

Date	Amount (In Rs.)
19.03.2015	52,47,200
	6,20,44,848
29.05.2015	52,47,200
20.08.2015	21,12,000
	73,59,200
Total	**7,19,44,048**

14. It is submitted that the reasons given for reopening the assessment is clearly does not arm the Department with the power under Section 148 read with Section 147 of the Act. It is therefore submitted that the Impugned Notice/Communication dated 26.03.2021 is liable to be quashed.

15. On the other hand, learned Senior Standing Counsel for the respondents would submit that the Order of ITAT cannot said to have attained finality as the question of law is still at large as the appeal filed by the revenue was dismissed only on account of low tax effect. However, it would not mean that the Department is precluded from reopening the assessment merely because the petitioner had taken up a contra stand in appeal against the Assessment Order dated 29.12.2017.

16. That apart, the learned Senior Standing Counsel for the respondents would submit that there is a clear embargo under Section 185 of the Companies Act, 2013 for the Company to give loans to its Directors or others and therefore submits that the so called loan given by the Company is not in accordance with the provisions of the Companies Act, 2013.

17. It is further submitted that even if the amount was repaid, there are no proper explanations coming forthwith as to how the petitioner repaid the amount.

18. By way of rejoinder, the learned counsel for the petitioner on the other hand would submit that the amounts were paid from the following three different account numbers:

a) Account Number ending with 30654

b) Account Number ending with 386862

c) Account Number ending with 387177

19. The aforesaid accounts were in the name of the **petitioner's mother**, **petitioner's wife** and the **petitioner**.

20. On the other hand, the learned Senior Standing Counsel for the respondents would submit that for the purpose of determining the amount which has escaped assessment for reopening of the assessment that was completed on 29.12.2017 would be relevant and therefore merely because the payments were made during the two Assessment Years that was one preceding and one thereafter is of no significance.

21. The learned Senior Standing Counsel for the respondents further submits that the order passed by the Income Tax Appellate Tribunal on 22.02.2022 in ITA.No.863/Chny/2022 is erroneous and therefore there is no impediment for proceeding further with the re-assessment that was quality initiated with the issuance of notice under Section 148 of the Income Tax Act, 1961 on 26.03.2021.

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

23. The reasons communicated to the petitioner for reopening the assessment reads as under:-

> "As per the information available with the department, during financial year 2014-15 the assessee had purchased a property for an amount of Rs.3,59,72,024/-. For acquiring the property assessee received entire amount from the company M/S Integrated Enterprises India Private Ltd in which assessee holds 29% of shares. At the time of completing the assessment u/s 143(3), the amount received from the company has been treated as deemed dividend under section 2(22)(e) of the IT Act. While computing the total income an amount of Rs.3,10,22,424/- was wrongly added instead of Rs.3,59,72,024/-. The difference of the above amounts needs to be taxed. Hence the facts confirm the escapment of income for the said year.
>
> Based on the facts discussed above, I have clear reasons to believe that the income of the assessee of Rs.49,49,600/- has escaped assessment within the meaning of section 147 of the Act and hence approval is sought from Principal Commissioner of Income Tax-1, Chennai to assess such escaped income.
>
> In this case more than four years have lapsed from the end of the assessment year under consideration.

> Therefore, necessary approval is requested from the Principal Commissioner of Income Tax-1, Chennai to assess such escaped income."

24. Thus, the question that arises for consideration is whether there was any tangible material that was available for reopening the assessment that was completed on 29.12.2017.

25. The fact that emerges from the discussion above, it is clear that a sum of Rs.3,10,22,424/- was sought to be added to the income of the petitioner as "deemed income" vide Assessment order dated 29.12.2017. The petitioner unsuccessfully challenged the same before the CIT (Appeals) who by an order dated 08.09.2022 had rejected the petitioner's Appeal. The Tribunal has now reversed the decision of the Commissioner's Appeal dated 08.09.2022 affirming the Assessment order dated 29.12.2017.

26. The attempt of the Department is to merely includes an additional amount of Rs.49,49,600/- over and above a sum of Rs.3,10,22,424/- which was the subject matter of the earlier Assessment

order which stands deleted. In the light of the above development and in the light of the fact that the Appeal itself has been withdrawn it has to be construed that the issue stands answered against the Revenue and in favour of the Petitioner.

27. Under these circumstances, this Writ Petition deserves to be allowed. Accordingly, it stands allowed. No costs. Consequently, connected writ miscellaneous petitions are closed.

14.11.2024

Index:Yes/No
Internet:Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No
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