IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.09.2024

CORAM

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

W.P.No.5742 of 2022
and
W.M.P.Nos.5830 and 5831 of 2022

Kothwal Mohamed Saleem ... Petitioner

Vs.

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

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

3. The Principal Commissioner of Income Tax-1,
No.121, Mahatma Gandhi Road,
Nungambakkam,
Chennai. ... Respondents

Prayer: Writ Petition filed under Article 226 of 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 in PAN.AAPPM2540L dated 25.02.2022 in DIN and Letter No.ITBA/AST/F/17/2021-22/1040128925(1) for AY 2015-16 along with impugned notice in PAN.AAPPM2540L in DIN & Notice No.ITBA/AST/S/148/2020-21/1032091698(1) dated 31.03.2021 issued under Section 148 of the Income Tax Act for the Assessment Year 2015-2016.

For Petitioner	: Mr.N.V.Narayanans
For Respondents	: Mr.B.Ramanakumar Senior Standing Counsel

ORDER

In this Writ Petition, the Petitioner has challenged the Impugned Notice dated 31.03.2021 issued under Section 148 of the Income Tax Act, 1961 and the consequential Speaking Order passed on 25.02.2022 in terms of the decision of the Hon'ble Supreme Court in **GKN Driveshafts (India) Limited** vs. **Income Tax Officer and Ors.** [2003] 259 ITR 9 (SC).

2. The dispute pertains to the Assessment Year 2015-2016. The case of the Petitioner is that the Petitioner had originally filed Return on 30.08.2015 and Revised Return on 07.03.2016.

3. It is submitted that even in the Original Return filed on 30.08.2015, the details of Rs.45 Crores received from the Sale Deed executed on 20.10.2014 was declared and therefore, the Impugned Notice dated 31.03.2021 was without jurisdiction and beyond the limitation under Section 147 of the Income Tax Act, 1961.

4. The learned counsel for the Petitioner therefore submits that the Impugned Order overruling the objection of the Petitioner for reopening of the completed assessment under Section 143(3) of the Income Tax Act, 1961 on 22.11.2017 is without jurisdiction.

5. Per contra, learned Senior Standing Counsel for the Respondents would make a reference to the reasons given for reopening assessment as communicated to the Petitioner on 30.09.2021, which reads as under:-

"ANNEXURE

> Based on the information available in insight portal under the category High Risk CRIU / VIR information uploaded by DIT (I & CI), during the year under consideration, as per details available on records, it is noticed that the assessee has entered

> into immovable Property transaction for Rs.45,00,00,000/-. As a result of enquiry and analysis of details available on records, it is noticed that as per the sale deed executed on 20.10.2014, the consideration paid during FY 2006-2007 and 2013-2014 works out to Rs.25,00,00,000. Assessee had given a reply stating that the transaction took place in the financial year 2006-2007. However, the execution of Sale Deed took place in the F.Y. 2014-2015. Since the income under the head capital gains is not admitted in Asst Year 2015-2016, after considering the materials available on records, I am satisfied that the said amount of Rs.45,00,00,000 is required to be brought under tax net."

6. It is submitted that the Original Return did not give full disclosure as the Petitioner has received consideration during different Assessment Years pursuant to Salesman Agreement.

7. That apart, learned Senior Standing Counsel for the Respondents would submit that the Petitioner had subsequently filed Revised Return on 07.03.2016, where the value of the property has been increased to Rs.50,46,41,593/-.

8. I have considered the arguments advanced by the learned counsel for the Petitioner and the learned Senior Standing Counsel for the Respondents.

9. The Petitioner would have been justified in stating that the extended period of limitation for reopening the assessment was not available but for the fact that during intervening the Petitioner there was a lock down imposed due to outbreak of Covid-19 pandemic and in view of the TOLA Ordinance and TOLA Act, 2020. Therefore, it cannot be said that the limitation for reopening of the completed assessment was time barred.

10. I do not find any reasons to interfere with the Impugned Notice dated 31.03.2021 and the Impugned Speaking Order dated 25.02.2022 overruling the objection of the Petitioner against reopening of the assessment.

11. Under these circumstances, Writ Petition stands dismissed. However, it is open for the Petitioner to participate in the proceedings before the Respondents. No costs. Consequently, connected Miscellaneous Petitions are closed.

24.09.2024

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

rgm

C.SARAVANAN, J.

rgm

To

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

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

3. The Principal Commissioner of Income Tax-1,
   No.121, Mahatma Gandhi Road,
   Nungambakkam,
   Chennai.

W.P.No.5742 of 2022
and
W.M.P.Nos.5830 and 5831 of 2022

24.09.2024