IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED**: 20.02.2024**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.10705 of 2022
and W.M.P.No.20929 of 2023

Kalyanasundaram Chandrasekaran ... Petitioner

-vs-

1.The Income Tax Officer,
International Taxation Ward-1(1),
Chennai.

2.The Income Tax Officer,
Ward 2(2) Gurgaon. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, to call for the records of the second respondent contained in its impugned notice dated 29.03.2021, issued under Section 148 of the Income Tax Act, 1961, bearing DIN Notice No.ITBA/AST/S/148/2020-21/1031873552(1) for PAN:AADPC7596C for assessment year 2016-17, together with all consequent Proceedings there to including the order dated 30.03.2022 issued under Section 144C of the Income Tax Act bearing DIN:ITBA/AST/F/144C/2021-22/1042058862(1) for PAN: AADPC7596C, for assessment year (AY) 2016-17 and all proceedings in furtherance thereof, and to quash the same as arbitrary, unjust and illegal.

For Petitioner : Mr.Suhrith Parthasarathy
For Respondents : Mr.D.Prabhu Mukunth Arun Kumar,
Jr.Standing counsel

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ORDER

The petitioner challenges the notice under Section 148 of the Income Tax Act, 1961 (the Income Tax Act) and the draft assessment order issued under Section 144C(1) thereof.

2. The petitioner received a notice dated 29.03.2021 under Section 148 of the Income Tax Act. Thereafter, a notice under Section 142(1) was issued to the petitioner stating that he had transferred 5000 shares of M/s.Info-Drive Analytics Pvt. Ltd(Info-Drive India) to M/s.Info-drive Analytics (Mauritius) Pvt. Ltd(Info-drive Mauritius), during the financial year 2015-2016 for a total consideration of Rs.12,50,000/-. He was called upon to provide an explanation with regard to the said transaction. By reply dated 23.08.2021, the petitioner raised objections on the ground that the procedure

specified under Section 127 was not followed, but filed the return of income in response there to. This was followed by further notices under Section 142(1) on 21.02.2022, 24.02.2022 and 25.02.2022. In response to the notice dated 25.02.2022, the petitioner asserted that he did not transfer any shares to Info-drive Mauritius during the financial year 2015-2016. Therefore, the petitioner requested the Assessing Officer to provide the basis for issuing the notice under Section 148. By a further notice, dated 24.03.2022, the Assessing Officer enclosed documents with regard to the transfer said to have been effected by the petitioner.

3. Thereafter, the petitioner lodged objections on 10.03.2022 by relying on the judgment of the Supreme Court in *GKN Driveshafts (India) Ltd Vs. ITO"(GKN Driveshafts) (2003) 1 SCC 72*. The impugned Draft Assessment Order was issued thereafter on 30.03.2022 under Section 144C of the Act. The present Writ Petition was filed in these circumstances.

4. Mr.Suhrith Parthasarathy, learned counsel for the petitioner, referred to the decision of the Supreme Court in *GKN Driveshafts* and contended that the Assessing Officer was under an obligation to consider the objections raised by the petitioner to the notice under Section 148 and to pass a speaking order. According to him, this obligation was not complied with by the Officer. By referring to the categorical assertion that the petitioner did not transfer any shares to Info-drive Mauritius, during the relevant financial year, learned counsel has also placed on record documents indicating that the share transfer was effected by the petitioner in favour of Mr.VN Seshagiri Rao on 12.02.2015, which falls within the financial year 2014-15 and not 2015-2016. He also points out that the consideration received was Rs.11,50,000/- and not Rs.12,50,000/-. In these facts and circumstances, learned counsel submits that the impugned draft assessment order is liable to be set aside and the matter remanded for re-consideration from the stage of issuing a speaking order based

on the objections of the petitioner.

5. Mr.D.Prabhu Mukunth Arun Kumar, learned junior standing counsel counters these submissions. As regards the applicability of the dictum in *GKN Driveshafts* (cited supra), he submits that the Court refused to interfere with the notice under Section 148 in that case. By referring to paragraph no.3 of the said judgment, learned counsel points out that the case before the Supreme Court arose out of the dismissal of Writ Petitions by a Division Bench of the Delhi High Court. In that factual context, learned counsel submits that the Supreme Court held that the objections of the assessee should be considered and that a speaking order should be passed. In this case, he submits that the petitioner admits that there was a share transfer. He next submits that the petitioner has the option of filing objections before the Dispute Resolution Panel and that the said Panel has the authority to issue directions to the Assessing Officer. Thus, he submits that no case is made out to set aside the draft assessment order.

6. By way of a short re-joinder, learned counsel for the petitioner submits that the jurisdiction of the Dispute Resolution Panel is limited, as is evident from Section 144C. Therefore, he concludes his submissions by reiterating the request that the draft assessment order be set aside.

7. On examining the notice under Section 148, and the subsequent notices under Section 142(1), it is evident that the Assessing Officer decided to re-open the assessment on the basis of information gathered while undertaking assessment in respect of Info-Drive India Ltd. The annexure to notice dated 24.03.2022 discloses that share transfers took place during the financial year 2015-16 and eventually 10,000 shares were transferred to Infodrive Mauritius. The said document appears to indicate that 5000 shares were transferred by the petitioner to Mr.V.N.Sesharigi Rao and those shares were eventually acquired by Infodrive Mauritius. Since this

transaction was not disclosed by the petitioner in his return of income, it is possible that the capital gains arising therefrom escaped assessment. Thus, there is some basis for re-opening the assessment.

8. However, the petitioner has placed additional documents on record. These documents appear to indicate that the petitioner transferred the shares to Mr.V.N.Sesharigi Rao on 12.02.2015. If the said documents are found to be valid and genuine on verification, they indicate that the share transfer took place during the financial year 2014-15 and not 2015-16. This would have a material impact on the re-assessment proceedings initiated by the Assessing Officer. Consequently, the petitioner should be provided an opportunity to place these documents for consideration by the Assessing Officer before the Assessing Officer prepares the draft assessment order. In order to facilitate this process, the draft assessment order is liable to be set aside and the matter is required to be remanded to the Assessing Officer.

9. Accordingly, the draft assessment order is set aside and the matter is remanded to the Assessing Officer. The petitioner is permitted to file fresh objections and annex all relevant documents within a maximum period of two weeks from the date of receipt of a copy of this order. Upon consideration thereof, the Assessing Officer is directed to issue a fresh draft assessment order within a period of two months from the receipt of the petitioner's objections.

10. W.P.No.10705 of 2022 is disposed of on the above terms. No costs. Consequently, W.M.P.No.20929 of 2023 is closed.

20.02.2024

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

To

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International Taxation Ward-1(1),
Chennai.

2.The Income Tax Officer,
Ward 2(2) Gurgaon.

SENTHILKUMAR RAMAMOORTHY,J

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