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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2024

CORAM:

THE HON'BLE MR JUSTICE C. SARAVANAN

W.P.No.10966 of 2022
and
W.M.P.Nos.10551 and 10550 of 2022

Nathella Anantha Padmanaban
Old No.14, New No.19/10,
Ramvardh 2nd Cross Street, R A Puram
Chennai – 600 028 ...Petitioner

Vs.

The Assistant Commissioner of Income Tax
Central CIR 3 (1)
Chennai ...Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorari to call for the records of the Respondent contained in Impugned Order under Section clause (d) of Section 148 A of the Income Tax Act, 1961 bearing DIN & Notice No.ITBA/AST/F/148A/2022-23/1042539379(1) dated 05.04.2022 for the assessment year 2018-19 and the consequent Impugned Notice under Section 148 of the Income Tax Act, 1961 bearing DIN & Notice No.ITBA/AST/S/148_1/2022-23/1042540008(1) dated 05.04.2022 for the assessment year 2018-2019.

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For Petitioner	:	Mr.PH.Arvind Pandian Sr. Advocate for Mr.R.Mansoor Ilahi
For Respondent	:	Mr.A.P.Srinivas Sr.Standing Counsel and Mr.A.N.R.Jayaprathap Jr.Standing Counsel

ORDER

Heard Mr.PH.Arvind Pandian for Mr.R.Mansoor Ilahi, learned Sr. Advocate for the petitioner, Mr.A.P.Srinivas, learned Sr.Standing Counsel and Mr.A.N.R.Jayaprathap, learned Jr.Stading Counsel for the respondent.

2. The petitioner has challenged the impugned order dated **05.04.2022**, passed under **Section 148A(d)** of the **Income Tax Act, 1961** and the impugned notice dated **05.04.2022**, issued under **Section 148** of the **Income Tax Act, 1961** for the Assessment Year 2018-19.

3. The petitioner had filed return of income on **05.10.2018** which ultimately culminated in an assessment order dated **03.08.2021**, under **Section 143 (3)** of the **Income Tax Act, 1961**. The aforesaid assessment order itself states that the case of the petitioner was selected for limited

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scrutiny through Computer Assisted Scrutiny Selection (CASS). Assessment order dated **03.08.2021**, passed under **Section 143 (3)** of the **Income Tax Act, 1961** reads as under:-

"*Assessment Order*

1. Shri Nathella Anantha Padmanabhan, hereinafter referred to as the assessee. The assessee is Managing Director of M/s.NAC Jewellers Private Limited. The assessee derived income from Business Income, house Property, Other Sources and Salary Income from M/s.NAC Jewellers Private Limited during the year. The assessee e-filed his Return of Income (ROI) u/s 139 (1) of the I.T.Act,1961 for the A.Y.2018-19 no 05.10.2018 declaring total income at Rs.9,45,36,180/-.

2. The case has been selected for 'Limited' Scrutiny through CASS. The reason for selecion of scrutiny through CASS is large deductions claimed by the assessee u/s.57 in schedule OS of ITR.

3. Notice u/s 143(2) of the I.T.Act,1961 was issued to the assessee on 28.09.2019. Subsequently, Notice u/s 142(1) of the I.T.Act, 1961 was issued to the assessee on 02/12/2019 and on 20/07/2020 by the National e-Assessment Centre. Further, following the CBDT Order in F.No.187/3/2020/ITA-I dated 18/09/2020, the case was transferred to this office. Notice u/s.129 of the Act for Change of Incumbent of the office was sent to the assessee on 20/01/2021. Notice u/s 142(1) of the I.T.Act,1961 was issued to the assessee on 24/04/2021 along with questionnaire asking the assessee to furnish details, documents and explanation on various points declared in the Return of Income filed.

4. In response to the notice u/s 142(1), the authorized

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representative of the assessee furnished the details, documents and explanation various dates. Claim of deduction u/s.27 of the I.t.Act, 1961 was also examined.

5. On examination of the details, documents and explanation submitted by the assessee, the income declared in the Return of Income filed u/s 139 (1) of the I.T.Act, 1961 is accepted.

6. In view of the above, total income of the assessee is computed as under:

Returned Income	*:*	*Rs.9,45,36,180/-*
Addition/Disallowance	*:*	*NIL*
Total assessed Income	*:*	*Rs.9,45,36,180/-*

7.Complete interest u/s 234A/234B/234C as per the Income Tax Act, 1961.

8. Assessed u/s 143(3) of the I.T.Act, 1961. Issue copy of Assessment Order, Demand Notice and Computation Sheet to the assessee."

4. Learned Sr.Counsel for the petitioner would submit that the aforesaid assessment order preceded and several notices were issued to the petitioner, which included notice under **Section 142 (1)** dated **24.04.2021**, which was responded by the petitioner by uploading the information on **30.04.2021**.

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5. It is submitted that the information that was uploaded on **30.04.2021** was also submitted on **9th of May 2021** physically before the Assistant Commissioner of Income Tax (Central Circle Chennai – 600 031.)

6. It is submitted that the reasons for reopening of the assessment that was earlier completed on **03.08.2021** under **Section 143 (3)** of the **Income Tax Act, 1961** because the assessment that was completed only under a limited scrutiny, Computer Assisted Scrutiny Selection (CASS) is not available.

7. It is further submitted that the aforesaid assessment order dated **03.08.2021** passed under **Section 143 (3)** of the **Income Tax Act, 1961** was also rectified by an order dated **15.12.2021** and therefore, there is absolutely no case made out for either issuance of the notice under **Section 148A(d)** of the **Income Tax Act, 1961**, as it stood with effect from **01.04.2021,** for the reasons stated therein and therefore, the impugned order dated **05.04.2022** is liable to be quashed.

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8. It is submitted that the entire exercise is inspired from change of opinion and therefore, contrary to the well-settled principles of law of the decisions of the Hon'ble Supreme Court particularly, the decision of the Supreme Court in **Commissioner of Income Tax, Delhi** Vs. **M/s.Kelvinator of India Limited** [2010 (1) TMI 11 – SUPREME COURT]

9. That apart, learned Standing Counsel also drew attention to the decision of the Division Bench of the Bombay High Court in **Infinity.com Financial Securities Ltd.** Vs. **Assistant Commissioner of Income Tax** [(2022) 137 taxmann.com 503 (Bombay)] wherein, under a similar circumstances, the Division Bench of the Bombay High Court quashed the proceedings initiated under **Section 148A(d)** of the **Income Tax Act, 1961**.

10. The learned counsel for the respondent, on the other hand would submit that the petitioner had merely disclosed the accountings in the financial statements namely, balance sheets and profit and loss account, which were filed pursuant to the the notice issued under **Section 142 (1)** of

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the **Income Tax Act, 1961**. The aforesaid document dated **30.4.2021** will not disclose as to whether the two entities with whom the petitioner had dealings were indeed Shell companies and were established for routeing funds having same address and no business activity.

11. Learned counsel for the respondent would draw attention to para No.2 of the impugned order dated **05.04.2022** passed under **Section 148A** of the **Income Tax Act, 1961**, wherein it has been clearly stated as follows:-

> *"Thereafter, specific information was flagged as per Risk Management Strategy formulated by the CBDT through ITBA software under the head 'High Risk CRIU/VRU cases'. As per said information, it is seend that Shri N Anantha Padmanabhan was engaged in high value transactions amouting to Rs.5,88,45,996/- with M/s.Blooming Star Diamond Pvt. Ltd (AACCB8435D) and Rs.5,88,47,611/- with M/s.Center Point Gems Pvt Ltd. (AACCC8064F) during the year under consideration. These two entities have been found to be shell companies which were established to route funds."*

12. I have considered the arguments of the learned Sr. Advocate for the petitioner and the learned Sr. Standing Counsel for the respondent.

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13. The reasons given for reopening of the assessment in the notice that was issued under **Section 148A(b)** of the **Income Tax Act, 1961** on **19.03.2022** clearly brings out the point that the two entities with whom the petitioner had dealings, contents of which were declared in the financial which were filed by the petitioner were shell companies, came to the knowledge of the Department only later that they were established to route funds for accommodation.

14. The reasons that the company was issued with a notice under **Section 148A(b)** of the Income Tax Act, 1961 dated **19.03.2022** reads as under:-

"ANNEXURE"

It is seen from the information available with the Department that Shri N Anantha Padmanabhan is engaged in high value transactions amounting to Rs.5,88,45,996/- with M/s. Blooming Star Diamond Pvt Ltd (AACCB8435D) and Rs.5,88,47,611/-with M/s.Center Point Gems Pvt Ltd (AACCC8064F). These two entities have been found to be shell companies which are established to route funds, having same address and no business activity.

2. The capital of the entity M/s.Blooming Star Diamond Pvt Ltd is only Rs.1,00,000/- however, the trade

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payable is Rs.146.67 cr. Similar amount is appearing as Debtors and advances on the assets side i.e., 59.26 crore and 59.93 crore. Further, on analysis of P&L account, the turnover of the party is shown as 83.09 crore and amount of purchases is around 95 crores. The profit is only 3.44 lac. These facts clearly indicate that the entity is a bogus entity. The assessee Shri N Anantha Padmanabhan has made aggregate transactions amouting to Rs.5,88,45,996/- with M/s.Blooming Star Diamond Pvt Ltd during the FY 2017-18.

3. Similarly, the capital of the entity M/s.Center Point Gems Pvt Ltd is only Rs.1,00,000/- however, the trade payable is Rs.152.65 crore. Further, on analysis of P&L account, the turnover of the party is shown as 55.50 crore and there is an equal amount of purchases. The profit is only 3.36 lac. These facts clearly indicate that the entity is a bogus entity. The assessee Shri N Anantha Padmanabhan has made aggregate transactions amounting to Rs.5,88,47,611/- with M/s.Center Point Gems Pvt Ltd during the FY 2017-18.

4.The above information has now been flagged in VRU module of Insight portal which suggests that income to the tune of Rs.11,76,93,607/- has escaped assessment in your case for the AY 2018-19.

5. In view of the above, you are hereby provided an opportunity of being heard as per Section 148A(b) of the Income Tax Act, 1961 to show cause on or before 23.03.2022 as to why notice u/s 148 of the Income Tax Act, 1961 should not be issued for reopening the assessment in your case for the AY 2018-19."

15. Therefore, invocation of machinery, under **Section 148A(b)** of the

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Income Tax Act, 1961 on **19.03.2022** and the consequential order that was passed under **Section 148A(d)** of the **Income Tax Act, 1961** on **05.04.2022** and the impugned notice dated **05.04.2022** issued under **Section 148** of the **Income Tax Act, 1961**, cannot be questioned as there was no occasion for the Income Tax Department or the Assessing Officer to come to the conclusion, that the petitioner had dealings with Shell companies and there were bogus transactions when the assessment orders were passed on **03.08.2021** under **Section 143 (3)** of the **Income Tax Act, 1961**.

16. In view of the above, I find no merits, challenge to the impugned notice and order passed by the respondent and it is open for the peitioner to participate in the re-assessment proceedings failing which, it is open for the Department to complete the re-assessment under **Section 144** of the **Income Tax Act, 1961** within a period of six (6) weeks from the date of receipt of copy of this order. This writ petition stands *dismissed*. No costs. Connected Miscellaneous Petitions are closed.

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

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To:
The Assistant Commissioner of Income Tax
Central CIR 3 (1)
Chennai.

C. SARAVANAN, J.
nst

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