IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2024

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.12842 of 2022
and
W.M.P.Nos.12305 and 12306 of 2022

Serpakkam Parthasarathy Sudharsan ... Petitioner

Vs.

1.The Income Tax Officer,
Non Corporate Ward 1(6),
121, Nungambakkam High Road,
Chennai.

2.The Additional/Joint/Deputy/Assistant
Commissioner of Income Tax/
Income Tax Officer,
National Faceless Assessment Centre,
Delhi. ... 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 and quash the impugned order under Section 148A(d) in DIN & Notice No.ITBA/AST/F/148A/2021-22/1042254947(1) dated

31.03.2022 passed by the first respondent and the impugned notice No.1 in PAN:BMTPS4691F dated 21.03.2022 in DIN ITBA/AST/F/148A(SCN)/2021-22/1041114160(1) issued under Section 148A(b) of the Income Tax Act, 1961 by the first respondent and the impugned notice No.2 issued under Section 148 of the Act by the first respondent dated 31.03.2022 in DIN & Notice number ITBA/AST/S/148_1/2021-22/1042288727(1) for the Assessment Year (AY) 2015-16.

For Petitioner : Mr.N.V.Balaji

For Respondents : Mr.B.Ramana Kumar
Senior Standing Counsel

ORDER

The petitioner is before this Court against the impugned notice dated 21.03.2022 issued under Section 148A(b) of the Income Tax Act, 1961, impugned speaking order dated 31.03.2022 issued under Section 148A(d) of the Income Tax Act and consequential notice issued under Section 148 of the Income Tax Act, 1961 dated 31.03.2022.

2. The specific case of the petitioner is that reasons given for re-opening of the assessment that was furnished to the petitioner are as under:-

Show-Cause Notice
SERPAKKAM PARTHASARATHY
SUDHARSAN/AY 2015-16

On perusal of the information available with this office, it is found that the assessee has made Payment of Life Insurance amounting to Rs.3,45,206/- has sold property amounting to Rs.58,65,000/- has made payment to Non-Resident amounting to Rs.1,847/- and has purchased property amounting to Rs.1,77,99,996/- during FY 2014-15. Whereas, it is observed that the assessee has failed to file the return of income for AY 2015-16.

In view of the above, the assessee is hereby required to show-cause as to why a notice under Section 148 should not be issued on the basis of above information which suggests that income chargeable to tax, in the form of asset (paid Life Insurance, Sale of Immovable Property, TDS-Payment made to Non-Resident and Purchase of Immovable Property) amounting to Rs.2,40,12,049/- has escaped assessment in the case of the assessee for the AY 2015-16.

This notice is issued with the prior approval of the Principal Chief Commissioner of Income-tax, TN & P, Chennai.

3. It is submitted that barring purchase of property during the relevant Financial Year, the petitioner had no other transactions mentioned above.

4. It is the further case of the petitioner is that the petitioner was merely an employee and taxable Income was below Taxable Turn Over and therefore the petitioner has not filed any return for the Relevant Assessment Year 2015-2016. It is further submitted that the petitioner had purchased the property only for a sum of Rs.89,00,000/-, out of which, Rs.75,00,000/- was from the loan and Rs.14,00,000/- was out of his savings.

5. Barring the above, there are no other informations that were available which was suppressed by the petitioner. It is submitted that for invoking machinery under Section 148A(b) for the purpose of notice under Section 148 of the Act was in force with effect from **01.04.2021,** the Department should have evidence as is contemplated under Section 149(1)(b) of the Income Tax Act, 1961 as it stood with effect from **01.04.2021**. It is submitted that mere possession of information is not sufficient for issuing notice under Section 148 of the Income Tax Act, 1961 and therefore the proceedings initiated has to be quashed. That apart, the petitioner has specifically asked the Department to provide

information regarding the alleged suppression of facts by the petitioner for issuance of the notice which has not been furnished.

6. The learned Senior Standing Counsel for the respondents on the other hand would submit that the petitioner has not filed any return and the information came to the Department based on the Risk Management Strategy which captured the transactions relating to purchase of immovable property and the other items mentioned above.

7. It is submitted that thus order came to be passed under Section 148A(d) of the Income Tax Act, 1961. It is further submitted that it is not proper for the petitioner to feign ignorance or say that the department does not have any documents as indeed the Department is in possession of information.

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 reply of the petitioner dated 28.03.2022 is not complete. The fact that the Department has issued a notice indicates that the Department was in possession of some evidence. It may be in the form of information gathered from the Risk Management Strategy adopted by the Income Tax Department. Therefore, it is not open for the assessee/petitioner to contend that the Department has violated Section 149(1)(b) of the Income Tax Act, 1961 as it stood during the period in dispute.

10. A reading of the impugned order indicates that the petitioner has not fully co-operated with the Department by furnishing all the details.

11. Mere production of the sale deed today before this Court is not sufficient. The petitioner ought to have file the return declaring nil income and also given full facts explaining the position in the reply notice dated 21.03.2022 issued under Section 148A(b) of the Income Tax Act, 1961. Therefore, to balance the interest of the parties and the rival contentions of the assessee/petitioner and the Department, Court is

inclined to set aside the impugned order and remit the case back to the respondents to pass a fresh order under Section 148A(b) of the Income Tax Act, 1961. The impugned order which stands quashed shall be treated as a corrigendum to the notice dated 21.03.2022 issued under Section 148A(b) of the Income Tax Act, 1961. The petitioner shall file a consolidated reply together with all the informations relating to the transactions to enable the Department to come to a fair conclusion as to whether the notice under Section 148 of the Act has to be issued afresh. Needless to state, time till such exercise is completed shall stands excluded.

12. In case, the Department is satisfied that the information that has to be furnished by the petitioner are inadequate, the Department can proceed with a fresh Notice under Section 148 of the Act and thereafter conclude the Assessment under Section 147 read with Section 144B of the Income Tax Act, 1961.

13. Since the dispute pertains to the Assessment Year 2015-16, it is expected that the entire proceedings will be completed as expeditiously

as possible preferably within a period of 9 months from the date of receipt of a copy of this order.

14. This Writ Petition stands disposed of. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

15.11.2024

Index:Yes/No
Internet:Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No
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C.SARAVANAN, J.

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