IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 31.07.2023

PRONOUNCED ON : 02.02.2024

CORAM

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.No.15448 of 2023
and
WMP.Nos.14997, 14998 & 15000 of 2023

Venkataramachettiar Manoharan ... Petitioner

vs.

1.The Income Tax Officer,
Non Corporate Circle -2(1), Coimbatore
Income Tax Department,
No.63, Race Course Road,
Coimbatore 641 018.

2.The Principal Commissioner of Income Tax-1,
Coimbatore,
Income Tax Department,
No.63, Race Course Road,
Coimbatore – 641 018.

3. The Principal Chief Commissioner of Income Tax,
Tamilnadu & Puducherry,
Income Tax Department,
No.121, Nungambakkam High Road,
Chennai 600 034. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records of the writ petitioner on the file of the 1st respondent to quash the impugned order under Section 148A9d) of the Income Tax Act, 1961 dated 31.03.2023 in DIN & Order No: ITBA/AST/F/148A/2022-23/1051790572(1) and consequential notice issued under Section 148 of the Income Tax Act, 1961 dated 31.03.2023 in DIN & Order No. ITBA/AST/S/148-1/2022-23/1051797112(1) for the Assessment Year 2016-17.

For Petitioner : Mr.A.S.Sriraman

For Respondents : Mrs.S.Premalatha
Junior Senior Standing Counsel
for Mr.R.S.Balaji
Senior Standing Counsel

ORDER

The petitioner is aggrieved by the impugned order dated 31.03.2023 bearing reference DIN & Order No:ITBA/AST/F/148A/2022-23/1051790572(1) passed by the first respondent under section 148A(d) of the Income Tax Act, 1961, disposing of the petitioner's objection against reopening of the assessment pursuant to the notice dated 31.03.2023 issued under section

148 of the Income Tax Act, 1961 (hereinafter referred to as the IT Act), dated 28.02.2023.

2. Relevant portion of the impugned order dated 31.03.2023 reads as under:

> "In this case, (I) the total income escaping assessment is Rs.64,00,000/- (purchase of the property is more than Rs.50 lakhs) (ii) the income escaping assessment is in the form of asset as per explanation to section 149(1)(b); and (iii) 10 years have not been lapsed for reopening the assessment. Therefore, all the conditions laid down in section 149(1)(b) are satisfied in this case.
>
> In this case no return of income has been filed for the year under consideration and accordingly, no assessment was made. Further, the requirements to initiate proceedings under section 147 of Income tax Act, 1961 as provided by section 148 has been duly followed and the prior approval of the specified authority as provided under section 151 of the income tax act have been obtained. In view of the above, provisions of Section 147 are applicable to the fact of this case and the assessment year under consideration is deemed to be a case where income chargeable to tax has been escaped assessment.
>
> In view of the above facts and discussions, it is held that this is a fit case for issue of notice u/s 148 of the Income-Tax Act, 1961, for the assessment year 2016-2017.
>
> This order is issued with the prior approval of the Principal Chief Commissioner of Income-Tax, Chennai."

3. It is the case of the petitioner that the petitioner had entered into an Agreement of Sale with one N.Ashok on 11.04.2012, the defendant in O.S.No.436 of 2014 before the Additional District and Sessions Court, Coimbatore. The petitioner claims to have paid earlier a sum of Rs.25,00,000/-, as advance to the said N.Ashok, against the total sale consideration of Rs.40,00,000/- for the sale of immovable property. Since the said N.Ashok failed to register a Sale Deed in favour of the petitioner pursuant to Agreement of Sale, the petitioner filed O.S.No.436 of 2014 before the Additional District and Sessions Court, Coimbatore. for specific performance.

4. It is the further the case of the petitioner that the suit was filed on 20.08.2014 by which time, the petitioner had paid a sum of Rs.14,00,000/- on various dates. Thus, in all, the petitioner has paid a sum of Rs.39,00,000/- prior to the institution of the suit in O.S.No.436 of 2014.

5. The suit was decreed by the Trial Court on 16.10.2014 and since the Judgment debtor failed to execute the Sale Deed, the petitioner filed Execution Petition, pursuant to which, the Sale Deed was executed by the Execution Court

in favour of the petitioner on 23.09.2015. Thus, the petitioner deposited the balance sale consideration of Rs.1,00,000/- before the Execution Court.

6. The specific case of the petitioner is that the invocation of Section 148A(b) of the IT Act, for the purpose of, reopening the assessement and for issuing a notice under Section 148 of the Income Tax, Act, 1961 itself has been defeated by the respondents vide impugned order though the petitioner had clearly explained the legal and factual position.

7. Specifically, it is submitted that during the Assessment Year 2016-2017, the petitioner paid only a sum of Rs.1,00,000/-, pursuant to the Judgment and Decree dated 16.10.2014 and therefore, the question of invoking Section 50C of the Income Tax Act, 1961, did not arise at all.

8. That apart, it is submitted that even otherwise question of invocation of the above machinery under Section 148A(b) of the Income Tax Act,1961 was clearly time barred in terms of Section 149(1)(b)of the Income Tax Act, 1961.

It is submitted that during the Assessment Year 2016-2017, the petitioner has paid only Rs.1,00,000/- and not Rs.50,00,000/- or above.

9. That apart, it is submitted that the guide line value prevailing on the date of sale on 29.09.2015 pursuant to the Judgment and Decree of the trial Court itself would not clothe the department to issue notice under section 148 A(b) of the IT Act.

10. It is submitted that the entire exercise has been made contrary to the amendment, which has been brought to the Income Tax Act, 1961 vide Finance Act, 2021 with effect from 01.04.2021.

11. On behalf of the respondents, it is submitted that there is no final determination in the impugned order, all that has happened is in order under Section 148A(b) passed on 31.03.2023,

12. It is still open for the petitioner to convince the officer that the assessment need not been completed in the proposed manner. It is further submitted that the petitioner has also not filed returns for the Assessment Year 2016-2017. Hence, there is no error in the Impugned Order.

13. It is submitted that the notice issued under Section 148 of the Income Tax Act 1961 dated 31/03/2023 after due cognizance and consideration of the responses filed by the assessee as was warranted as the petitioner has not filed his Income Tax Returns for the Assessment Year 2016-17 after acquiring the title deed of the immovable property by transfer, the Fair Market Value of the property which stood at Rs.64,00,000/-.

14. It is submitted that as per Section 50C of the Income Tax Act, 1961 relevant to the Assessment Year 2016-17, the date of transfer of the property is to be taken into consideration for taxation of capital gains.

15. It is submitted that the petitioner in his objection letter dated 20/02/2023 in Sl.No.08 vide response to notice under Section 148A(b) of the Income Tax Act, 1961 dated 28/02/2023 has relied on the first proviso to Section 50C of the Income Tax Act,1961.

16. First proviso to Section 50C of the Income Tax Act,1961 reads as under:-

> "Provided that where the date of the agreement fixing the amount of consideration and the date of registration for the transfer of the capital asset are not the same, the value adopted or assessed or assessable by the stamp valuation authority on the date of agreement may be taken for the purposes of computing full value of consideration for such transfer".

17. It is submitted that as per the second proviso to Section 50C of the Income Tax Act,1961, the first proviso shall apply only in a case where the amount of consideration or a part there of, has been received by way of an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account on or before the date of the agreement for transfer and submitted that even though this proviso stands prejudicial to

the assessee as he has neither registered the sale agreement and has paid Rs. 25 lakhs in cash vide Page.2 of Sale Agreement dated 11/04/2012 as submitted by the assessee, it is not taken into consideration as the proviso was inserted by the Finance Act 2016, and effects from 01.04.2017.

18. Hence, it is submitted that the date of transfer viz. 23.09.2015 has been taken for invoking the provisions u/s 50C and 56 (2) (vii)(b) read with second proviso of the Income Tax Act prevalent on 01.04.2017.

19. It is therefore submitted that the escapement of income as per Section 50C of the Income Tax Act, 1961 read with second proviso is more than 50 lakhs and that the Assessing Officer was well within the ambit of law while he exercised the jurisdictional powers vested upon him under Sections 148 & 149 of the Income Tax Act, 1961 before issuing the notice under Section 148 of the Income Tax Act,1961 dated 31.03.2023 and hence prayed for dismissal of the writ petition.

20. It is further submitted that the Assessing Officer has followed all the necessary procedure as is required by law before invoking the provisions of Section 148 of the Income Tax Act,1961.

21. It is further submitted that the Assessing Officer had information in hand that the Petitioner had purchased an immovable property for a consideration of Rs.64,00,000/- (as per the Fair Market Value on the date of transfer) during the financial year 2015-16 and that the information in hand was established to be truthful as per the information collected from SRO, Joint -1, Sub Registrar Office, Coimbatore.

22. It is further submitted that a mere agreement between two entities for sale of immovable property which is not registered is beyond the knowledge of the department, and would not amount to an actual transfer of any interest in the immovable property, but a deed of sale, if duly registered, would operate as a conveyance of such interest and therefore submitted that the order passed by the Assessing Officer under Section 148A(d) of the Income Tax Act,1961 and

the connected Notice under Section 148 of the Income Tax Act,1961 may be treated as good in law.

23. I have considered the arguments advanced by the learned counsel for both sides. Although, elaborate submission was made by the petitioner on merits on the strength of proviso to Section 50(C) of the Income Tax Act, 1961, the fact remains that the petitioner had not filed the regular return under Section 139 of the Income Tax Act, 1961 for the assessment year 2016-17.

24. Whether the petitioner is entitled to the relief based on the points raised before this Court is capable of being decided by the Assessing Officer, as admittedly no regular Returns of Income was filed by the petitioner.

25. Even, if the petitioner may have a case for dropping of the proposed proceedings, I am of the view it is better for the petitioner to file a proper reply to the notice issued under Section 148 of the Income Tax Act, 1961 as there is no previous history of any proceeding under Income Tax Act, 1961. Therefore,

this Writ Petition has to fail.

26. The Assessing Officer is therefore directed to take into consideration of all the relevant facts before proceedings to conclude whether any income had escaped Assessment for the Assessment Year 2016-2017. It is expected that the Assessing Officer shall pass appropriate orders, within a period of three months from the date of receipt of a copy of this order.

27. This writ petition stands dismissed with the above observations. No costs. Consequently, connected miscellaneous petitions are closed.

02.02.2024

Index : Yes/No
Neutral Citation : Yes/No
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C.SARAVANAN, J.

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Pre-delivery Order in
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