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W.P.No.15020 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.06.2024

CORAM :

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.15020 of 2024 and
W.M.P.Nos.16319 & 16320 of 2024

Mrs.R.Chitra

... Petitioner

Versus

National Faceless Assessment Centre,
Room No.401, 2nd Floor, E-Ramp,
Jawaharlal Nehru Stadium,
Delhi-110 003,
Represented by Assessment Unit
Income Tax Department.

...Respondent

Prayer : A Writ Petition filed under Article 226 of the Constitution of India pleased to issue a Writ of Certiorari calling for the records of the Respondent leading to issuance of Impugned Order dated 13.03.2024 (vide DIN ITBA/AST/S/147/2023-24/1062553808(1) and quash the same.



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For Petitioner : Mr. S.Sathyanarayanan

For Respondent : Dr.B.Ramaswamy
Senior Standing Counsel

ORDER

An assessment order dated 13.03.2024 in respect of assessment year 2019-20, which corresponds to financial year 2018-19, is challenged in this writ petition.

2. The assessee is assessed to tax under PAN AGLPR2701E. In respect of the above mentioned assessment year, the assessee did not file return of income on the basis that her income was below the exemption limit. She had purchased an immovable property at Thottipalayam Village, Tiruppur, for the sale consideration of about Rs.1.56 crore under a sale deed dated 12.07.2018 bearing document No.3029/2018. Upon coming to know of such transaction, a notice under Section 148 A (b) of the Income Tax Act,



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1961 (the Income Tax Act), was issued to the petitioner. On considering the petitioner's reply, an order dated 30.03.2023 under Section 148A(d) thereof was issued. This was followed by notices under Section 142(1) and 143(2) of the Income Tax Act. The petitioner replied on 30.01.2024. Being dissatisfied with such reply, a show cause notice on 17.02.2024 was issued calling upon the petitioner to show cause as to why proposed variations in respect of the addition of a sum of Rs.1,56,96,000/- under Section 69A and a further sum of Rs.26,16,000/- under Section 56(2)(vii)(b) should not be imposed. The petitioner replied to the show cause notice on 21.02.2024. The impugned assessment order was issued on 13.03.2024.

3. Learned counsel for the petitioner submitted that the petitioner replied to the notice under Section 148A(b) by stating that the immovable property was purchased from funds provided



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by her husband directly to the vendor. He also points out that the petitioner had provided the bank statements of her husband's account in the AXIS Bank, which discloses the relevant payments. He points out that this was noticed in the order under Section 148A(d) by recording that the explanation of the assessee is *prima facie* in order.

4. His next contention is that under Section 69A only applies to assesseees who are required to maintain books of account. Since the petitioner does not fall within such category, he contends that Section 69A is inapplicable. By referring to the petitioner's reply dated 30.01.2024, which preceded the show cause notice, learned counsel points out that the petitioner enclosed the sale deed of the property and stated categorically that the immovable property was purchased from the funds of her husband and that the same is duly accounted in his books of account. He also pointed out that the petitioner requested that she be informed if the explanation is not satisfactory so as to enable her to file detailed submissions.



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Similarly, in response to the show cause notice, he pointed out that the Axis bank statements were uploaded and the payment list was provided with regard to payment of stamp duty charges by the petitioner.

5. As regards the second issue relating to the alleged failure to declare the market value of the property and pay taxes thereon, learned counsel contended that stamp duty is liable to be paid on the guideline value and that it was paid on such basis. By referring to the reply to the show cause notice, he pointed out that the petitioner stated that she was unable to object to the fixation of stamp duty by reckoning the value at Rs.1,83,12,000/- due to family and other personal reasons and that she was taking steps to claim a refund of the excess stamp duty. He further submitted that the show cause notice referred to Section 56(2)(vii)(b), whereas the impugned order refers to Section 56(2)(x)(b)(B). Therefore, he contended that the impugned order cannot be sustained on



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account of the discrepancy in the provisions relied on by the respondent.

6. Dr.B.Ramaswamy, learned senior standing counsel, accepts notice for the respondent. By referring to the impugned order, learned senior standing counsel points out that the notice under Section 148 was issued on 30.03.2023. Even in response to such notice, he submits that the petitioner did not file the return of income, which was eventually filed only on 22.12.2023. He also points out that by notice under Section 142(1), the petitioner was called upon to provide a copy of the return of income, the registered sale deed, bank accounts from 01.04.2018 to 31.03.2019, sources of income for the year under consideration, etc. In spite of receipt of such notice, he submits that only partial information was provided on 16.10.2023. Likewise, he submits that the petitioner provided partial information both in response to the notice and questionnaire under Section 143(2) and in response to show cause



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notice dated 17.02.2024. In those circumstances, learned senior standing counsel contends that the assessing officer drew an adverse inference of escaped assessment due to the failure of the assessee to provide ledger accounts from her husband's books of account along with the relevant balance sheet. In effect, he submits that the assessee failed to provide the information called for in spite of being provided multiple opportunities to do so. Therefore, he contends that the impugned order contains no infirmity with regard to the addition of a sum of Rs.1,56,96,000/. As regards the second issue of the addition of Rs.26,16,000/-, he submits that stamp duty was computed by the registering authority by reckoning the market value of Rs.1,83,12,000/-. Therefore, he submits that the assessment order contains no infirmity.

7. Based on the rival submissions, the first issue to be considered is whether the conclusion with regard to the addition of a sum of Rs.1,56,96,000/- calls for interference. Learned counsel



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for the petitioner contended that Section 69A of the Income Tax Act does not apply in cases where books of account are not required to be maintained. Section 69A reads as under:

“Unexplained money, etc.

69A. *Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the [Assessing] Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year.”*

As is evident from the above provision, it is directed at unexplained money. Consequently, if the assessee concerned is



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required to maintain books of account and does not record the relevant income or other article in such books of account, the assessee is called upon to provide an explanation. If he fails to provide an explanation or if his explanation is not satisfactory, the money or other article shall be deemed to be the income of the assessee. In the case of an assessee who is not required to maintain books of account, but the Income Tax Department receives information that such person is the owner of unexplained money or other article, such assessee would be called upon to provide an explanation and the same consequences would follow if the assessee does not reply or if the reply of the assessee is not satisfactory. This is evident from the use of the expression "books of account, if any", in Section 69A. If any other interpretation is placed on this provision, any assessee not required to file books of account would get away scot-free when such assessee is found to have unaccounted money.



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8. In response to the notice under Section 148A(b), the assessee stated that the source of funds for the purchase of the immovable property was from her husband. This was taken note of in the order under Section 148A(d) by recording as follows:

“A verification of the response of the assessee indicates that assessee's claim that there was a duplication in reported figure of Rs.3,13,92,000/- as against the actual figure of Rs.1,56,96,000/- is correct. The explanation of the assessee regarding the source for the purchase of the property that the purchase was made out of the funds of her husband which has been accounted in his books of accounts. This claim of the assessee is prima facie in order.”

9. The above extract discloses that the assessing officer was *prima facie* satisfied with the explanation of the petitioner as regards the addition of Rs.1,56,96,000/-. The said order, however,



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also discloses that the assessing officer was not satisfied with regard to the difference of Rs.26,16,000/- between the purchase consideration and the market value. With regard to this addition, it is noticeable from the petitioner's reply dated 30.01.2024 to the notices under Section 142(1) and 143(2) that she enclosed a copy of the registered sale deed. She also enclosed the bank statement to establish the source of funds. She stated categorically that the funds were accounted for in her husband's books of account. She also requested that she be provided an opportunity to make more detailed submissions if the explanation is not satisfactory. In reply to the show cause notice, once again, the bank statements were attached. It is stated therein that the payments were numbered on the bank statements as reference numbers 1, 6, 8 and 9 and that such payments were made directly to the vendor. It should be noticed, however, that the petitioner did not submit the return of income of her husband or the ledger account, if any, relating to the purchase of this property.



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10. Learned counsel for the petitioner submitted that such documents were not called for by the Income Tax Department. This submission is not entirely satisfactory because it was incumbent on the petitioner to not only establish the source of funds, but also to show that the sum of Rs.1,56,96,000/- was duly reported by her husband in his return of income and that applicable tax thereon had been paid.

11. Nonetheless, the petitioner has placed on record evidence that her husband paid for the purchase of the relevant immovable property. In the event that her husband had duly declared this income and paid applicable taxes thereon, grave injustice would be caused inasmuch as the same income would be subject to tax in the hands of two persons. For such reason, the impugned order warrants interference. Since the petitioner did not avail of the opportunities and provide all necessary documents, the petitioner is liable to pay costs.



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12. Turning to the second issue relating to the addition of a sum of Rs.26,16,000/-, such addition was proposed on account of the fact that the Sub Registrar concerned concluded that the market value of the property was Rs.1,83,12,000/- and not Rs.1,56,96,000/-. On such basis, the differential amount of Rs.26,16,000/- was added to the income of the assessee. Learned counsel for the petitioner contended that the show cause notice referred to Section 56(2)(vii)(b), which is not applicable to the assessee, whereas the impugned order refers to Section 56(2)(x)(b)(B). On examining the provisions referred to in the show cause notice and the impugned order, it is clear that the provisions are substantially similar albeit Section 56(2)(vii)(b) applies to transactions that took place on or before 01.04.2017, whereas Section 56(2)(x)(b)(B) applies to transactions subsequent thereto. Stamp duty was admittedly paid on Rs.1,83,12,000/- and the differential amount of Rs.26,16,000/- exceeds both the Rs.50,000/- and 10% thresholds specified in Sections 56(2)(x)(b)(B)(i) and (ii).



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For the above reason and by taking into account the fact that the provisions are substantially similar and the petitioner had sufficient opportunity to show cause in respect of the proposed addition, I conclude that the mentioning of a different provision in the show cause notice does not vitiate the order in this respect.

13. The next contention of learned counsel for the petitioner on this issue was that stamp duty is leviable on the guideline value. Stamp duty is imposed on conveyances under Article 23 of the Schedule to the Indian Stamp Act, 1899, as applicable in Tamil Nadu. As per Article 23, stamp duty is payable on the instrument of conveyance at a fixed percentage of the market value and not the guideline value. In the reply to the show cause notice, the petitioner stated that she was unable to object to the determination of stamp duty on the basis of the open market value of Rs.1,83,12,000/- due to family and other personal reasons, and that the petitioner is taking steps to claim a refund of excess stamp



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duty. For reasons set out above, the contention of the petitioner and the learned counsel on this aspect cannot be accepted. As a corollary, no case is made out for interference with the impugned order on this aspect.

14. For reasons aforementioned, the impugned assessment order is set aside only insofar as it relates to the addition of a sum of Rs.1,56,96,000/-. To that extent, the remand is subject to the condition that the petitioner pays a sum of Rs.10,000/- as costs to the Adyar Cancer Institute, Chennai, within two weeks from the date of receipt of a copy of this order. Subject to the fulfillment of above condition, the petitioner is permitted to file additional documents within fifteen days from the date of receipt of a copy of this order. In order to enable the petitioner to upload the same, the respondent shall provide access to the portal. Upon receipt of such additional documents, the respondent is directed to provide a reasonable opportunity to the petitioner, including a personal



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hearing through video conference, and thereafter issue a fresh order insofar as the addition under Section 69A is concerned within three months from the date of receipt of a copy of this order. For the avoidance of doubt, it is clarified that the order does not call for any interference as regards the addition under Section 56(2).

15. W.P.No.15020 of 2024 is disposed of on the above terms without any order as to costs. Consequently, the connected miscellaneous petitions are also closed.

18.06.2024

Index : Yes /No

Speaking Order : Yes /No

Neutral Case Citation : Yes /No

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To

National Faceless Assessment Centre,
Room No.401, 2nd Floor, E-Ramp,
Jawaharlal Nehru Stadium,
Delhi-110 003,
Represented by Assessment Unit
Income Tax Department.



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SENTHILKUMAR RAMAMOORTHY,J.

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