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W.P. No.24369 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.24369 of 2021 and
W.M.P. Nos.25675 and 25677 of 2021 and 4062 of 2022

Vaani Estates Private Limited,
No.60, Old 100, IV Street,
Abhiramapuram, Chennai 600 018.
Represented by its Director
Smt.Sasikala Raghupathy

.. Petitioner

Vs.

1. Additional / Joint / Deputy / Asst. Commissioner
of Income Tax / Income Tax Officer,
National e-Assessment Centre, Delhi.
2. The Income Tax Officer,
Corporate Ward – 3(4), Chennai 600 034.
3. The Chairman,
Central Board of Direct Taxes,
Room No.149, North Block,
Secretariat Building, New Delhi – 110 001.

..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records of the Petitioner on the file of 1st Respondent and quash the Impugned Assessment Order in DIN:ITBA/AST/S/143(3)(SCN)2021-22/1035962275(1) dated 28.09.2021 in PAN: AAECV0933A for the Assessment Year 2014-15 and direct the 1st Respondent to pass fresh order as per the directions of the Hon'ble High Court in TC(A) No.224 of 2019 dated 04.04.2019.



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For Petitioner : Mr.Vijayaraghavan
for Mr.Subbaraya Aiyar Padmanabhan

For Respondents : Mrs.S.Premalatha
Standing Counsel

ORDER

The writ petition is filed challenging the impugned orders of assessment on the ground that the directions issued by this Court in T.C.A. No.224 of 2019, viz., that the assessing authority would undertake the exercise of fact finding by determining the fair market value of the shares in terms of Explanation to Section 56(2)(viib) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”), was not adhered / complied with.

2. Brief facts:

The Company was initially formed by Mr.B.G.Raghupathy and his wife Sasikala Ragupathy, each holding 5000 shares. Upon the death of Mr.B.G.Raghupathy, his shares devolved on his daughter Mrs. Vaani Raghupathy. In order to purchase a property in Adyar, Chennai, Mrs.Sasikala Ragupathy brought in a sum of Rs.23.32 crores through Banking Channels against which, she was allotted 10100 shares at a premium of Rs.23,086/- per share. The total number of shares held as on the end of the relevant assessment year by Mrs.Sasikala Raghupathy and Mrs. Vaani Raghupathy stood at 15100



shares and 5000 shares respectively. The assessing authority imposed tax treating the said 'Share Premium' as "Income from Other Sources" under Section 56(2)(viib) of the Act. Aggrieved by the order of assessment the same was challenged before the Commissioner Appeals. The order of assessment was confirmed by the learned Commissioner of Income Tax (Appeals).

3. The matter was carried in appeal to the Tribunal, wherein the Tribunal vide its order in ITA No.1352/Chny/2018 dated 27.08.2018 held that the provisions of Section 56(2)(viib) cannot be invoked in the case of assessee company when cash or asset is transferred by a mother to her daughter.

4. Against which, the Revenue had preferred an appeal before this Court wherein after considering the arguments of both sides, the following directions were issued in T.C.A.No.224 of 2019:

"7. Having heard the learned counsel for the parties and considering the aforesaid provisions, we are of the opinion that the learned assessing authority was required to undertake the exercise of fact finding by determining the Fair Market Value of the Shares in question as required in the Explanation to Section 56 as quoted above. That exercise not having been done, the matter deserves to be remanded back to the learned assessing authority for undertaking the said fact finding exercise. The assessee will be free to raise all factual and legal contentions including the point about the said amount being treated as 'gift' from mother to daughter. The assessee may also seek necessary clarification from the Central Board of Direct Taxes on administrative side."

(emphasis supplied)



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5. It is submitted by the learned counsel for the petitioner that pursuant to the above orders of this Court, they approached the Central Board of Direct Taxes (CBDT) for a clarification vide letter dated 01.11.2019. While the said request for clarification was pending, the Respondent had issued a notice on 03.02.2021 under Section 142(1) of the IT Act calling upon the petitioner to furnish the following details:

- i) Detailed calculation of share premium.
- ii) P/L A/C and Balance sheet for the A.Y. 2014-15 with all annexure
- iii) Why the entire share premium will not be added back u/s 56(2)(viib)-
explanation thereof.

5.1. A detailed response to the above notice was filed by the petitioner on 09.02.2021 and submitted detailed calculation of share premium, P/L Account and Balance sheet for the AY 2014-15 with all the Annexures and an explanation why the entire share premium should not be added back u/s.56(2)(viib). Further the petitioner has also stated that it has moved a petition dated 01.11.2019 before the CBDT u/s. 119 of the Act, seeking clarification on the applicability or otherwise of Section 56(2)(vii) of the Act which is still pending.



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5.2. Thereafter a show cause notice dated 23.09.2021 was issued calling upon the petitioner to submit its objections if any to variations proposed, it was further stated that the petitioner had not filed any document in support of its claim seeking clarification from CBDT, over looking the fact that the petitioner had vide its reply dated 09.02.2021 specifically stated that the clarification was sought for under Section 119 and the same is awaited. The petitioner submitted its reply vide letter dated 27.09.2021 requesting 15 days time to submit its reply, the petitioner enclosed the acknowledgment of the reminder to CBDT made by the petitioner on 15.10.2020 and 23.08.2021. However, the impugned order came to be passed the following day that is on 28.09.2021.

5.3. It was submitted by the learned counsel for the petitioner that the writ petition was filed during Covid and in view of the delay in getting the writ petition numbered and to ensure that the challenge to the impugned orders are not hit by limitation, an appeal was also filed. It is further submitted that the same was filed for the limited purpose of saving limitation. A memo has been filed wherein it is stated that the petitioner has filed a petition for withdrawal of the appeal filed by them before the NFAC / CIT(A) on 27.10.2021.



5.4. It is informed by the learned counsel for the petitioner that their request has been subsequently rejected by CBDT stating that the power to clarify under Section 119 of the Act cannot be exercised to clarify individual cases. It is further submitted that now a copy of the valuation report issued by the Merchant Bankers is now available which may have a bearing on the issue.

5.5. It was further submitted that this Court had directed that the assessing officer was required to undertake the exercise of finding a fair market value of share as contemplated in the Explanation to Section 56 of the Act. However, the exercise has not been completed thus the impugned order is not in compliance with the directions of this Court. In view thereof, it is submitted by the learned counsel for the petitioner that the impugned proceedings suffers from more than one infirmity, viz.,

- a. Request for adjournment was not considered.
- b. Directions of this Court has not been complied with.
- c. Yet another reason why they would think that the matter needs to be remitted back is in view of the fact that they are in possession of the valuation report (Merchant Bankers), which has a bearing on the issue.



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6. To the contrary, it is submitted by the learned counsel for the Respondent that the impugned order of assessment does not warrant interference in as much as adequate opportunity has been provided to the petitioner.

7. To a pointed question as to whether the impugned order has been made in compliance with the directions of this Court, no response was forthcoming. It is thus evident that the direction of this Court has not been complied. Any order contrary / disregarding the direction of this Court cannot be sustained as it renders the order bad for want of jurisdiction, in this regard it may be relevant to refer to the decision of the Hon'ble Supreme Court in the case of *East India Commercial Co. Ltd. v. Collector of Customs*, reported in AIR 1962 SC 1893 wherein it is held as under :

“31.....Section 167(8) of the Sea Customs Act can be invoked only if an order issued under Section 3 of the Act was infringed during the course of the import or export. The Division Bench of the High Court held that a contravention of a condition imposed by a licence issued under the Act is not an offence under Section 5 of the Act. This raises the question whether an Administrative Tribunal can ignore the law declared by the highest court in the State and initiate proceedings in direct violation of the law so declared. Under Article 215, every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself. Under Article 226, it has a plenary power to issue orders or writs for the enforcement of the fundamental rights and for any other purpose to any person or authority, including in appropriate cases any Government, within its territorial jurisdiction. Under Article 227 it has jurisdiction over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. It would be anomalous to suggest that a tribunal over which the



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High Court has superintendence can ignore the law declared by that court and start proceedings in direct violation of it. If a tribunal can do so, all the subordinate courts can equally do so, for there is no specific provision, just like in the case of Supreme Court, making the law declared by the High Court binding on subordinate courts. It is implicit in the power of supervision conferred on a superior tribunal that all the tribunals subject to its supervision should conform to the law laid down by it. Such obedience would also be conducive to their smooth working : otherwise, there would be confusion in the administration of law and respect for law would irretrievably suffer. We, therefore, hold that the law declared by the highest court in the State is binding on authorities or tribunals under its superintendence, and that they cannot ignore it either in initiating a proceeding or deciding on the rights involved in such a proceeding. If that be so, the notice issued by the authority signifying the launching of proceedings contrary to the law laid down by the High Court would be invalid and the proceedings themselves would be without jurisdiction.”

(emphasis supplied)

8. In view of the same, the impugned order is set aside and the writ petition stands disposed of. It is open to the assessing officer to complete the assessment orders in compliance with the directions of this Court in T.C.A.No.224 of 2019 dated 04.04.2019 after providing reasonable opportunity to the petitioner. Consequently, connected miscellaneous petitions are closed. No costs.

19.01.2024

Speaking (or) Non Speaking Order

Index: Yes/No

Neutral Citation: Yes/No

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MOHAMMED SHAFFIQ, J.

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