IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	27.07.2023
Pronounced on	03.01.2024

CORAM

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

W.P.No.22319 of 2023
and
W.M.P.Nos.21699 and 21700 of 2023

P.S.Subramanian ... Petitioner

Vs

1. The Income Tax Officer,
   Non-corporate Ward 19(6),
   121, M.G.Road, Nungambakkam,
   Chennai – 600 034.

2. The Assessment Unit,
   National Faceless Assessment Centre,
   Income Tax Department,
   Delhi.

3. The Commissioner of Income Tax (Appeals),
   National Faceless Appeals Centre (NFAC),
   Ministry of Finance,
   Government of India,
   New Delhi.

(R3 *suo moto* impleaded vide order dated 03.01.2024 by CSNJ) ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the Respondents contained in its notice bearing DIN & Notice No.ITBA/AST/S/148_1/2021-22/1042102204(1), issued by the 1st Respondent under Section 148 of the

Income Tax Act, 1961, dated 30.03.2022 and all proceedings in furtherance thereof including but not limited to the assessment order bearing DIN: ITBA/AST/S/147/2022-23/1050715820(1) passed by the 2nd Respondent under Section 147 read with Section 144 read with Section 144B of the Income Tax Act, 1961, dated 14.03.2023 and the notice of demand bearing DIN & Notice No.ITBA/RCV/S/221/2023-24/1053128441(1) issued by the 1st Respondent under Section 221(1) of the Income Tax Act, 1961, dated 24.05.2023, for PAN:AMLPN7769E, for Assessment Year (AY) 2015-2016 and to quash the same as arbitrary, unjust and illegal.

For Petitioner : Mr.Suhrith Parthasarathy
For Respondents : Mrs.S.Premalatha
Junior Standing Counsel
for Mr.R.S.Balaji,
Senior Standing Counsel

ORDER

The petitioner has filed the writ petition for the following relief:-

"*Writ petition filed to issue a writ of Certiorari to call for the records of the respondents contained in its notice bearing DIN & Notice No.ITBA/AST/S/148-1/2021-22/1042102204(1), issued by the 1st respondent under Section 148 of the Income Tax Act, 1961 dated 30.03.2022 and all proceedings in furtherance including but not limited to the assessment order bearing DIN : ITBA/AST/S/147/2022-23/1050715820(1) passed by the 2nd respondent under Section 147 read with Section 144 read with Section 144B of the Income Tax Act, 1961, dated 14.03.2023 and the notice of demand bearing DIN & Notice No.ITBA/ RCV/*

S/2021/2023-244/1053128441(1) issued by the 1st respondent under Section 221(1) of the Income Tax Act, 1961 dated 24.05.2023, for PAN : AMLPN7769E, for Assessment Year (AY) 2015-16 and to quash the same."

2. In this writ petition, the petitioner has challenged the impugned notice dated 30.3.2022 issued under Section 148 of the Income Tax Act, 1961, the impugned assessment order dated 14.3.2023 passed for the Assessment Year 2015-2016 and notice of demand dated 24.05.2023 bearing reference DIN & Notice No.ITBA/ RCV/ S/2021/2023-244/1053128441(1) issued by the 1st respondent under Section 221(1) of the Income Tax Act, 1961 for PAN : AMLPN7769E, for Assessment Year (AY) 2015-2016.

3. Earlier an assessment order dated 14.03.2023 was passed by the second respondent for the Assessment Year 2015-2016 under Section 147, 143(3), 144, 144B of the Income Tax Act, 1961 in the name of the deceased assessee, namely Late Mrs.Nirmala Subramanian, the wife of the petitioner herein. Assessee however died on 14.04.2023.

4. The petitioner has already filed a statutory appeal before the

Commissioner of Income Tax (Appeals) against the Assessment Order dated 14.03.2023 on 14.06.2023 in his capacity as the legal heir of the deceased Late Mrs.Nirmala Subramanian. The appeal has been filed with the PAN No.AMLPN7769E of the deceased assesee in Form- 35 in the individual capacity.

5. The appeal has been acknowledged by the Income Tax Department on 14.06.2023. The said appeal was filed without following the procedure prescribed for filing of such appeals by the legal heir of the deceased assessee. Thus, the appeal has not been numbered so far.

6. The petitioner has now filed this Writ Petition for the above relief by challenging the notice dated 30.03.2022 issued under Section 148 of the Income Tax Act, 1961 in the name of the deseased assessee late Mrs.Nirmala Subramanian, the wife of the petitioner, the Assessment Order dated 14.03.2023 in the her name and notice dated 24.05.2023 issued in her name under Section 221 of the Income Tax Act, 1961 which was received by the petitioner.

7. It is the case of the petitioner that the petitioner's wife late

Mrs.Nirmala Subramanian was a homemaker and that an immovable property worth Rs.1,20,00,000/-was purchased by the petitioner in her name from one Mr.K.Jayakumar on 27.10.2014 from and out of the income of the petitioner which was registered as Document No.2687 of 2014 before the Sub-Registrar, Ashok Nagar.

8. The learned counsel for the petitioner would submit that it is well settled that this Court has the power to quash the notice issued under Section 148 dated 30.03.2022 although an assessment order dated 14.03.2023 has been passed subsequently.

9. It is submitted that the deceased assessee had not filed return of Income in her name as she had no income of her own. It is submitted that the details of the income of the petitioner were declared in the regular returns filed by the petitioner herein on 27.08.2015 for the Assessment Year 2015-2016 along with statement of income, wherein amounts transferred to the deceased assessee for purchase of the property was declared.

10. It is submitted that in the statement of accounts that was enclosed along with the returns, the income of the petitioner along with the names of creditors of the petitioner were declared.

11. It is further submitted that in the statement of accounts/balance sheet as on 31.03.2015 filed along with return, there is a clear reference to loans and advances given to various persons which includes a sum of Rs.95,60,000/- to the petitioner's wife namely Late Mrs.Nirmala Subramanian namely the deceased assessee and that the amount that was utilised for purchase of the property, was the amount given as a loan to the deceased assessee for being paid to the vendor namely K.Jayakumar.

12. It is the specific case of the petitioner that the petitioner had a gross income of Rs.1,55,07,521/- and that the petitioner paid the tax along with surcharge and interest thereon for a sum of Rs.50,60,520/-.

13. It is therefore submitted that before passing order under 148A(d) of the Income Tax Act, 1961 on 27.03.2022, the deceased assesee was issued with a notice dated 17.03.2022 under Section 148A(b), wherein, the deceased assessee was called upon to furnish by 21.03.2022.

14. Unaware of the order passed under Section 148A(d) of the Income Tax Act, 1961 on 27.03.2022, a reply was also sent to the Income Tax Department on 30.03.2022 enclosing of the communications including the Income Tax returns filed by the petitioner herein on 27.08.2015 together with the enclosures.

15. It is submitted that these aspects ought to have been considered by the respondent before passing the order passed under Section 148A(d) on 27.08.2015 and the consequential notice dated 30.03.2022 under Section 148 and impugned Assessment Order dated 14.03.2023.

16. The learned counsel for the petitioner would submit that on the date of appeal on 14.06.2023, the deceased assessee's PAN had become inoperative after her death on 14.04.2023.

17. The learned counsel further submits that after the death of the deceased assessee, the Permanent Account Number of deceased assessee was no longer valid. It is submitted that although the legal heirs of the deceased assessee are deemed to be the assessee as per Section 159 of the Income Tax Act, 1961, the appeal filed on 14.06.2023 is not getting linked with the PAN Card and Aadhar Card number of the deceased assessee and therefore the petitioner as the Legal Representative is remediless.

18. Defending the impugned order, the learned Senior Counsel for the respondents would submit that Statutory Appeal in Form-35 has been filed against the Assessment Order dated 14.03.2023 and therefore, this writ petition is liable to be dismissed.

19. That apart, it is submitted that under similar circumstances, this Court in its order dated 15.04.2023 in W.P.Nos.9142 & 9145 of 2023 in the case of **Shapoorji Pallonji Solar Holdings Private Limited vs. ITO**, has held that once an assessee has filed an appeal before the Appellate Authority, the powers of the Court under Article 226 of the Constitution of India cannot be invoked.

20. That apart, the learned Junior Standing Counsel for Senior Standing Counsel for the respondent would further submit that the appeal having been filed in the capacity as the legal representative of the deceased assesee late Mrs.Nirmala Subramanian, the Writ Petition filed by the petitioner is liable to be dismissed, It is submitted that the appeal has been instituted before the Appellate Commissioner with defects which should be directed to be cured.

21. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents.

22. After a notice was issued under Section 148 to the the deceased

assessee on 30.03.2022, a Return of Income of the deceased assessee has been filed on 25.04.2022. It appears to have been considered before the passing of the Assessment Order dated 14.3.2023.

23. The deceased assessee died on 14.4.2023 after the assessment order was passed on 14.3.2023.

24. As a legal representative of the deceased assessee namely late Mrs.Nirmala Subramanian, the petitioner as also the other legal heirs are deemed to be assessees and are liable to pay any sum which the deceased assessee would have been liable to pay if the deceased assessee had not died. This is the the mandate of Section 159(1) of the Income Tax Act, 1961.

25. As the legal representative of the deceased assessee, the petitioner and the other legal representatives of the deceased assessee Mrs.Nirmala Subramanian are deemed to be the assessee's within the meaning of Section 159 (3) of the Income Tax Act, 1961.

26. As per Sub-Section (4) to Section 159 of the Income Tax Act, 1961, if a legal representative of a deceased assessee creates a charge or disposes the assets of deceased assesse or parts with any of the assets of the estate of the deceased assesse, which comes to his or her or their possession or may come into to his or her or their possession in future, then such legal representative is/are personally liable for any tax due and payable by a deceased assessee in their capacity as legal representative as long as such liability subsists and remains unpaid/undischarged. However, such personal liability is limited to the value of the assest so charged, disposed of or parted with.

27. In other words, generally, the liability of the legal representative is limited to the extent to which the estate of the deceased assesse is capable of meeting the liability as per sub Section Sub-Section (6) to Section 159. The legal representative is personally liable to the extent of the value of any assest of the estate which he disposes while the liability for tax remains undischarged as per Sub-Section (4) to Section 159 of the Income Tax Act, 1961.

28. Section 159 of the Income Tax Act, 1961 reads as under:-

"159.(1) Where a person dies, his legal representative shall be liable to pay any sum which the deceased would have been liable to pay if he had not died, in the like manner and to the same extent as the deceased.

(2) For the purpose of making an assessment (including an assessment, reassessment or recomputation under section 147) of the income of the deceased and for the purpose of levying any sum in the hands of the legal representative in accordance with the provisions of sub-section (1),—

(a) any proceeding taken against the deceased before his death shall be deemed to have been taken against the legal representative and may be continued against the legal representative from the stage at which it stood on the date of the death of the deceased;

(b) any proceeding which could have been taken against the deceased if he had survived, may be taken against the legal representative; and

(c) all the provisions of this Act shall apply accordingly.

(3) The legal representative of the deceased shall, for the purposes of this Act, be deemed to be an assessee.

(4) Every legal representative shall be personally liable for any tax payable by him in his capacity as legal representative if, while his liability for tax remains undischarged, he creates a charge on or disposes of or parts with any assets of the estate of the deceased, which are in, or may come into, his possession, but such liability shall be limited to the value of the asset so charged, disposed of or parted with".

(5) The provisions of sub-section (2) of section 161, section 162, and section 167, shall, so far as may be and to the extent to which they are not inconsistent with the provisions of this section, apply in relation to a legal representative.

(6) The liability of a legal representative under this section shall, subject to the provisions of sub-section (4) and sub-section (5), be limited to the extent to which the estate is capable of meeting the liability."

29. After the death of an assessee, the respective Legal Representatives must register themselves in the Income Tax Portal by submitting the PAN of the deceased assessee along with their PAN as the Legal Representative of deceased assessee and produce a death certificate of the deceased assessee together with their legal heirship Certificate.

30. It is only after such compliance, appeal against an assessment order passed in the name of a deceased person can be numbered and heared. The petitioner as legal heir of the deceased assessee ought to have complied with the same along with other legal representatives of the deceased assesse Mrs. Nirmala Subramanian.

31. The petitioner as the legal representative of the deceased assessee

along with the other legal representatives thus ought to have to filed an appeal against the Assessment Order dated 14.03.2023 by following the prescribed procedure. The petitioner has however filed a defective appeal on 14.06.2023 before the Commissioner of Income Tax (Appeals).

32. Having, opted to correctly challenge the Assessment Order dated 14.03.2023 before the Commissioner of Income Tax (Appeals) by filing an appeal though with defects, it is not open to the petitioner to challenge the assessment order and/or the notices that preceded the impugned assessment order and/or the subsequent notice issued under section 221(1) of the Income Tax Act,1961 in the name of the deceased assesse.

33. This writ petition is therefore without any merits and is therefore liable to be dismissed. However, liberty is given to the petitioner to work out the remedy before the Commissioner of Income Tax (Appeals) by curing the defect in the appeal filed on 14.06.2023. Defects pointed out shall be cured by the petitioner within a period of 45 days of receipt of a copy of this order.

34. The Office of the Commissioner of Income Tax (Appeals), National

Faceless Appeals Centre (NFAC), New Delhi, is to be *suo moto* impleaded as third respondent and is directed to number the appeal subject to the petitioner and other legal representatives complying with other statutory requirements for the filing of appeal as the legal representatives of the deceased assessee namely Mrs.Nirmala Subramanian. On the appeal being numbered, it shall be disposed on merits within a period of six (6) months from the date of receipt of a copy of this order. Needless to state petitioner/legal representatives or their Authorised representatives shall be heard.

35. Considering the above, recovery proceedings against the petitioner and legal representatives of the deceased assessee namely Mrs.Nirmala Subramanian shall be kept in abeyance for a limited period of six (6) months from today. Accordingly, the Writ Petition stands dismissed with the above liberty. No costs. Consequently, connected miscellaneous petitions are closed.

03.01.2024

Neutral Citation: Yes/No
Speaking/Non-speaking Order
jas/kkd/rgm

C.SARAVANAN, J.

rgm

To

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