



W.P.No.24637 of 2021

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.24637 of 2021

and

W.M.P.Nos.25914, 25916 and 25917 of 2021

Pahilajrai Lund (deceased)

2.P.Haresh Lund

3.P.Shakti

4.P.Muktha

5.P.Rajesh Lund

... Petitioners

Vs.

1.The Additional/Joint/Deputy/Assistant Commissioner
of Income Tax/Income-tax Officer,
National e-Assessment Centre, Delhi.

2.The Income-tax Officer,
Non-Corporate Ward 1(3),
Coimbatore.

... 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 first



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respondent and quash the impugned order in DIN No.ITBA/AST/S/147/2021-22/1035936293(1) for the Assessment Year 2014-2015 passed by the first respondent under Section 147 read with Section 144B of the Income-tax Act, 1961 dated 27.09.2021, as illegal, arbitrary, devoid of merit and passed in violation of the procedure mandated by the Act.

For Petitioners : Mr.N.V.Narayanan

For Respondents : Dr.B.Ramaswamy
Senior Standing Counsel

ORDER

The writ petition is of the year 2021.

2. The petitioners are before this Court against the Impugned Assessment Order dated 27.09.2021 passed under Section 147 read with Section 144B of the Income Tax Act, 1961 (hereinafter referred to as the 'Act').

3. The assessment was completed on 29.08.2016 whereby, the petitioners return of income was accepted. It appears that the aforesaid Impugned Assessment Order was passed after the informations were called for and furnished by the petitioners as detailed below:-



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1. Copies of Sale Deed and Settlement Deed of sale of property. Assessee has 1/3rd share of sale.
2. Copies of Fixed Deposit receipts for investment in capital gains account Scheme for Rs.53,00,000/-.
3. Copies of Statement of account from M/s.Srivari Infrastructure Private Limited for investment in their new project “Maya” and payment of Rs.1,00,00,000/- for the same.
4. The assessee has sold his old house and has realised a sum of Rs.1,60,00,000/- as his share from the property. The same has been credited to his capital account and hence there is an increase in capital. An account of capital abstract from his books is enclosed.

4. The assessment was reopened by issuance of notice under Section 148 of the Act on 25.07.2019. The reasons for reopening the assessment was later furnished to the petitioners on 11.02.2021 when a notice under Section 142(1) of the Act was issued. The purported reason for reopening the assessment are as under:-

“The assessee, Shri Pahilajrai Lund had sold a land vide document No.2159/2013 dated 08.08.2013 for a consideration of Rs.4,80,00,000/- out of which the share of the assessee was 1/3rd. The property was acquired by way of a settlement deed executed by his father on 25.05.1984 in favour of the assessee and his two brothers. While computing the income under the head Capital Gain in the return of income filed for the AY 2014-15, the assessee had taken the cost of land @ Rs.2,15,000/- whereas as per the Settlement Deed submitted during the assessment proceedings, the market value of the property was Rs.2,23,880/-. The assessee had claimed a



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deduction of Rs.53,00,000/- u/s 54 for having deposited the said amount in Capital Gain Accounts and had submitted copies of deposits made in Syndicate Bank. On perusal of the certificates it is seen that the assessee had deposited the money in Term Deposits for a period of 1 year which yield 9.5% interest. The assessee has not deposited the amount in the Capital Gains Account Scheme, 1988 notified by the Central Government for claiming deduction u/s 54F of the IT Act.

The deduction of Rs.53,00,000/- u/s 54F made by the assessee while computing income under Capital Gains is void since the assessee failed to deposit the amount in the Capital Gains Account Scheme, 1988 notified by the Central Government. An amount of Rs.53,00,000/- chargeable to tax under Income Tax Act in case of the assessee for the previous year 2013-14 relevant to the AY 2014-15 has therefore escaped taxation under the Income Tax Act.”

5. The petitioners have replied to the same, which has now culminated in the Impugned Assessment Order. Operative portion of the Impugned Assessment Order reads as under:-

“3. The assessee has claimed deduction of Rs.53,00,000/- as the capital gain is deposited in Capital Gain Accounts and had submitted copies of receipts of the deposits made with the Syndicate Bank. The bank statement in respect of deposits in Capital Gain Accounts was called for from the bank vide notice u/s 133(6) and bank has submitted the statement of accounts. In the reply from bank there was no mention of the deposit in Capital Gain Accounts while there were debits in the bank statement as under:

02-APR-14 61224920000011-TD PAYIN CASA XFER 1,000,000.00
02-APR-14 61224920000011-TD PAYIN CASA XFER 1,000,000.00
02-APR-14 61224920000011-TD PAYIN CASA XFER 1,000,000.00
02-APR-14 61224920000011-TD PAYIN CASA XFER 1,000,000.00
02-APR-14 61224920000011-TD PAYIN CASA XFER 5,00,000.00



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02-APR-14 61224920000011-TD PAYIN CASA XFER 5,00,000.00

23-JUL-14 61224920000011-TD PAYIN CASA XFER 3,00,000.00

The debits were transferred to Term Deposit towards Current/Savings transfer and not Capital Gain Account Scheme. In view of the above, the deduction claimed Rs.53,00,000/- is disallowed.

In view of the above, the deduction of Rs.1,60,00,000/- is disallowed and the entire amount is brought to tax.

Subject to the above remarks, the total income of the assessee is computed as below:-

Total Income as assessed	6,00,900
Add : Capital Gain as explained above	1,60,00,000
Total Income	1,66,00,900

Show cause incorporating the above facts in the form of draft assessment order was issued and reply received. The assessee has contended that while calculating cost of acquisition, cost to previous owner is rightly claimed as the property was gifted to him by his father. Also the cost in new property is rightly claimed as deduction as the investment in new property is more than the cost of capital gain deduction claimed. The contention of assessee is accepted. However the claim of the assessee of deposit of Rs.53,00,000/- in Term Deposit covered by Capital Gain Scheme in Syndicate Bank is not acceptable. The case was reopened for the reason that, on perusal of the certificates it is seen that the assessee had deposited the money in Term Deposits for a period of 1 year which yield 9.5% interest and that the assessee has not deposited the amount in the Capital Gains Account Scheme, 1988 notified by the Central Government for claiming deduction u/s 54F of the IT Act, 1961. Notice u/s 133(6) to the Syndicate Bank was issued calling for the statement of account opened under the Capital Gain Account Scheme. The Bank submitted the statement of the savings bank only and there is no mention of any account opened under Capital Gains Account Scheme. In the absence of confirmation from the bank on



the such deposit made, the authenticity of the certificate from the bank submitted by the assessee remains doubtful. In view of the same, the contention of the assessee cannot be accepted. The assessee had requested for personal hearing through video conferencing in the reply to the show cause. However, the option was not exercised through the e-filing portal. Therefore, the assessee was intimated to initiate the request through the e-filing portal VC was conducted. The assessee representative had nothing new to explain and maintained the stand that the amount of Rs.53,00,000/- was deposited in Term Deposit under the Capital Gain Account Scheme. It was again put before the assessee that the Bank has not given any details of Term Deposits under the Capital Gain Accounts Scheme when such details was specifically called for from the Syndicate Bank and Canara Bank. The assessee admitted that such account was closed and payment made to the developer towards purchase of new property. The assessee was asked if the account was closed after approval from the Income Tax Authority, he expressed his ignorance over such fact. Closure of accounts under Capital Gain Accounts Scheme requires approval from the jurisdictional Assessing Officer. Form G is required to be submitted for the closure of account along with jurisdictional Assessing Officer approval. The assessee has no knowledge of such procedure and approval taken which clearly proves that the assessee had deposited Rs.53,00,000/- in Term Deposits but not in Capital Gains Account Scheme, 1988 notified by the Central Government for claiming deduction u/s 54F of the IT Act, 1961. The assessee during the VC also claimed that the Canara Bank had emailed to the NeFAC on 18/09/2021 confirming the deposit and submitted details on capital gain deposit. However, no such communication received from the NeFAC. Moreover the assessee was requested to submit the statement of account opened under the Capital Gain Account Scheme in the earlier notices. The bank maintains separate account for such deposits and procuring such statement would have confirmed the same. But the assessee only submitted statement of savings account. The Bank in its reply to notice u/s 133(6) also submitted only statement of savings account. Therefore, the Term Deposits made in Capital Gains Account Scheme, 1988 notified by the Central Government for claiming deduction u/s 54F of the IT Act, 1961 remains unverified. The



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deduction of Rs.53,00,000/- claimed u/s 54 is disallowed as the assessee has not deposited the amount in the Capital Gains Account Scheme, 1988 notified by the Central Government for claiming deduction u/s 54F of the IT Act, 1961.

Subject to the above remarks, the total income of the assessee is computed as below:-

<i>Income from Business/Profession</i>		<i>17547</i>
<i>Income from Capital Gain</i>		
<i>Sales Consideration</i>	<i>16000000</i>	
<i>Less: Cost of Acquisition</i>	<i>672963</i>	
	<i>15327037</i>	
<i>Less Deduction u/s 54</i>	<i>10000000</i>	
	<i>5327037</i>	
<i>Long Term Capital Gain</i>	<i>27037</i>	<i>5354074</i>
<i>Income From Other Sources</i>		<i>568073</i>
<i>Total Income</i>		<i>5939694</i>
<i>Rounded off</i>		<i>5939690</i>

This order is being passed u/s 143(3) read with Section 263 read with Section 144B and NeAC (National e-Assessment Centre) is to be read as NaFAC (National Faceless Assessment Centre). Charge interest u/s. 234A, 234B, 234C and 234D of the IT Act, 1961. Given credit for pre-paid taxes, if any, after due verification. Issued Demand Notice and Challan accordingly. Penalty proceedings u/s. 271(1)(c) of the Income-tax Act, 1961 initiated separately.”

6. In support of the present writ petition, the learned counsel for the petitioners would submit that invocation of jurisdiction under Section 148 of the Act was beyond the period of limitation under Section 148 read with



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Section 147 of the Act as there was no suppression of facts by the petitioners.

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7. That apart, it is submitted that for the first time in the Impugned Assessment Order, the first respondent has come to an adverse conclusion that based on the reply received from the Syndicate Bank in response to the notice under Section 133(6) of the Act, wherein the Syndicate Bank had purportedly stated that there was no mention of the deposit in Capital Gain Accounts while there were debits in the Bank Statement as detailed above.

8. Learned counsel for the petitioners therefore submits that not only the Impugned Assessment Order was beyond the period of limitation and without jurisdiction but also without considering the Certificate issued by the Canara Bank on 19.02.2021.

9. Learned counsel for the petitioners has also drawn attention to the Certificate dated 19.02.2021 issued by the Canara Bank for the aforesaid sum of Rs.53,00,000/- which was deposited in Syndicate Bank and invested in Capital Gains Account Scheme on various dates as detailed below:-



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Sl. No.	Account Opening Date	Amount	Account No.
1.	23.07.2014	Rs.3,00,000/-	61224920000011
2.	02.04.2014	Rs.10,00,000/-	61224920000011/1
3.	02.04.2014	Rs.10,00,000/-	61224920000011/2
4.	02.04.2014	Rs.10,00,000/-	61224920000011/3
5.	02.04.2014	Rs.10,00,000/-	61224920000011/4
6.	02.04.2014	Rs.5,00,000/-	61224920000011/5
7.	02.04.2014	Rs.5,00,000/-	61224920000011/6

10. Learned Senior Standing Counsel for the respondents on the other hand would draw attention to Paragraph 7 of the Counter Affidavit wherein, it has been stated as follows:-

“7. It is submitted that providing the information collected through Notice u/s 133(6) from various agencies to the petitioner is not binding for the assessing officer. Therefore, the submission of the petitioner that 'I have not given the copy of the details sought from the bankers to the Notice u/s 133(6) and completed the assessment based on materials collected behind my back' is baseless and the assessing officer has categorically denied that he has not received any communication from bank to confirm the deposit in Capital Gain Account Scheme as claimed by the assessee.”

11. Having considered the submissions of the learned counsel for the petitioners and the learned Senior Standing Counsel for the respondents and the documents filed by the petitioners in Page Nos.59 to 71 of the typed set of



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papers, I am of the view, the petitioners are entitled to a notice before an adverse conclusion was arrived in Paragraph 3 of the Impugned Assessment Order that the Certificate did not mention Capital Gains Account. This ought to have been informed to the petitioners before an adverse order was passed against the petitioners.

12. Under these circumstances, this Court is inclined to set aside the Impugned Assessment Order and remits the case back to the first respondent to pass appropriate orders on merits in accordance with law as expeditiously as possible preferably within a period of six months from the date of receipt of a copy of this order.

13. All the issues are left open to the canvassed by the petitioners in the remand proceedings.

14. This Writ Petition is disposed of with the above observations. No costs. Connected Writ Miscellaneous Petitions are closed.

19.08.2024

Index : Yes/No



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Internet : Yes/No

Speaking Order/Non-Speaking Order

Neutral Citation : Yes/No

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To

- 1.The Additional/Joint/Deputy/Assistant Commissioner
of Income Tax/Income-tax Officer,
National e-Assessment Centre, Delhi.
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