BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.07.2024

CORAM

THE HONOURABLE MR. JUSTICE C.SARAVANAN

W.P(MD).No.9526 of 2023
and W.M.P(MD).Nos.8503, 8504 and 26821 of 2023

K.Devaraj

.. Petitioner

Vs

1.The Income Tax Officer, Exemptions Ward,
No.4, William's Road,
Cantonment, Trichy-620001.

2.The Additional/Joint/Deputy
/Assistant Commissioner of Income Tax
Income Tax Officer, National Faceless Assessment Center,
Delhi.

.. Respondents

Prayer : This Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari, to call for the records relating to the impugned Assessment Order of the first respondent PAN AAGTS4037F for assessment year AY 2013-14 the impugned Assessment Order u/s 147 of the Income Tax Act, 1961 in DIN :ITBA/AST/S/147/2022-23/1051420176(1) dated 27.03.2023 and u/s 274 read with Section 271(1)(c) of Income Tax Act 1961 in DIN : ITBA/AST/S/147/2022-23/1051420176(1) dated 27.03.2023 for the AY 2013-14 and to quash the same.

For Petitioner : Mr.V.S.Jayakumar
Senior Counsel
for Mr.S.B.Kayvin Prince

For Respondents : Mr.N.Dilipkumar
Senior Standing Counsel

ORDER

Heard the learned Senior Counsel for the petitioner and the learned Senior Standing Counsel for the Income Tax Department/respondents.

2. In this writ petition, the petitioner has challenged the impugned Assessment Order dated 27.03.2023 for the Assessment Year 2013-2014. It appears that the petitioner had purchased two properties on 16.02.2007 vide Document Nos. 793 and 795 of 2007. It appears that the petitioner was unable to utilise the same. The petitioner had approached the Principal District Court, Trichy, by filing a Petition in Trust O.P.No.1 of 2008 seeking permission to sell the said properties. By order dated 02.08.2012, the learned Principal District Judge, Trichy, had passed the following order:-

> *"(a)Petitioner is permitted to sell the properties in public auction by fixing the reserve price after ascertaining the market value of the property and by giving wide publication in the Hindu and prominent Tamil daily.*
>
> *(b)Sale proceeds shall be deposited in a nationalised bank and the interest shall be utilised for the performance and objects of the Trust.*
>
> *(c)Sale proceeds should not be withdrawn on any account except for investing the same in any better security, with the approval of the Court.*

(d)Copy of sale deed and FDR shall be produced into Court within one month from the date of sale."

3. Pursuant to the aforesaid order, an Advocate Commissioner was appointed by the Court and the property purchased in the year 2007 was sold by the Advocate Commissioner in favour of one Mrs.Malliga Janakiraman for a sum of Rs.1,50,01,000/-(Rupees One Crore Fifty Lakhs and One Thousand only). This is the subject matter of dispute under Section 148 of the Income Tax Act, 1961.

4. The petitioner had approached this Court thrice, both at the stage of Section 148 notice which the constitutional validity of the Notification issued under the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, was challenged. Challenging the notice issued under Section 148 of the Income Tax Act, 1961, W.P(MD).No.11312 of 2021 was filed. By an order dated 29.03.2022, this Court had granted interim relief to the petitioner in W.P(MD).No. 11312 of 2021. Both the writ petitions filed by the petitioner were disposed along with the batch. The petitioner did not press for relief in W.P(MD).No.16821 of 2021, wherein the constitutional validity of the Notification issued under Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, was challenged.

5. The case of the petitioner appears that the time for completing the assessment under Section 153 of the Income Tax Act, 1961 would have normally expired on 31.03.2020. However, on account of outbreak of Covid-19 Pandemic and in view of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 and the Ordinance and Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, the time for impugned notice would have expired on 31.03.2021.

6. It is the case of the petitioner that the assessment that has been completed by the first respondent is time barred and that even the time between 09.07.2021 from the date of interim order in W.P(MD).No.11312 of 2021 and the order passed by the Division Bench of this Court on 29.03.2022, wherein a batch of Writ Petitions was disposed, is excluded, the assessment order that has been passed, has time barred.

7. The learned Senior Counsel for the petitioner submitted that the petitioner may be given one opportunity to explain the position before the first respondent.

8. The learned Senior Standing Counsel for the respondents, on the other hand, would submit that the Writ Petition is liable to be dismissed, as the petitioner has an alternate remedy before the Appellate Commissioner under Section 246(A) of the Income Tax Act, 1961. It is further submitted that the Hon'ble Division Bench had also given such liberty while passing the final order on 29.03.2022. It is further submitted that the notice was served on 01.04.2021 and therefore, the last date for completion of the assessment will be 31.03.2023 and therefore, there is no merit in this Writ Petition.

9. I have considered the submissions made by the learned Senior Counsel for the petitioner and the learned Senior Standing Counsel for the respondents.

10. I am of the view that the petitioner can be granted a partial relief by setting aside the impugned order explaining the position as to the limitation. In case, the petitioner succeeds on limitation, the demand that has been proposed may be dropped. On the other hand, in case, the Officer has come to a conclusion during the hearing that no case is made out for dropping the assessment on account of limitation, the petitioner shall be ready to make submissions on merits. The first respondent shall pass suitable order on merits as expeditiously as possible, preferably, within a period of six months from the date of receipt of a copy of this order.

11. Needless to state, the petitioner is at liberty to file additional written submissions. The petitioner shall also be heard before passing final orders. The petitioner shall also co-operate with the first respondent.

12. With the above directions, this Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

01.07.2024

NCC : Yes/No
Index : Yes/No
Rmk

To

1.The Income Tax Officer, Exemptions Ward,
No.4, William's Road,
Cantonment, Trichy-620001.

2.The Additional/Joint/Deputy
/Assistant Commissioner of Income Tax
Income Tax Officer, National Faceless Assessment Center,
Delhi.

C.SARAVANAN, J.

Rmk

W.P(MD).No.9526 of 2023
and W.M.P(MD).Nos.8503, 8504 and 26821 of 2023

01.07.2024