BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.10.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.(MD)No.13829 of 2024
and
W.P.(MD)Nos.12163 and 12164 of 2024

Abu Shamima Parveen ... Petitioner

Vs.

The Income Tax Officer,
Ward 1, Karaikudi – 630 002. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records relating to the assessment order passed by the respondent under Section 147 read with Section 144B of the Income Tax Act, 1961 vide DIN No: ITBA/AST/S/147/2024-25/1064887233(1) dated 15.05.2024 and the consequent demand notice passed by the respondent under Section 156 of the Act, vide DIN & Notice No.:ITBA/AST/S/156/2024-25/1064887374(1) dated 15.05.2024 and Penalty Notices issued under Sections 271(1)(b), 271(1)(c) and 271F vide DIN and Notice ITBA/PNL/F/271(1)(b)/2024-25/1064887356(1) dated 15.05.2024, DIN ITBA/PNL/S/271(1)(c)/2024-25/1064887359(1) dated 15.05.2024 and DIN ITBA/PNL/S/271F/2024-25/1064887361(1) dated 15.05.2024 and to quash the same.

For Petitioner : Mr.N.C.Rajah
Senior Counsel
For Mr.K.Anbuchelvam

For Respondent : Mr.N.Dilip Kumar
Senior Standing Counsel

O R D E R

This Writ Petition is filed challenging the impugned order of assessment under Section 147 read with 144-B of the Income Tax Act, 1961, (hereinafter referred to as "the Act") vide DIN No: ITBA/AST/S/147/2024-25/1064887233(1) dated 15.05.2024 and the consequent demand notice passed by the respondent under Section 156 of the Act, vide DIN & Notice No.:ITBA/AST/S/156/2024-25/1064887374(1) dated 15.05.2024 and Penalty Notices issued under Sections 271(1)(b), 271(1)(c) and 271F vide DIN and Notice ITBA/PNL/F/271(1)(b)/2024-25/1064887356(1) dated 15.05.2024, DIN ITBA/PNL/S/271(1)(c)/2024-25/1064887359(1) dated 15.05.2024 and DIN ITBA/PNL/S/271F/2024-25/1064887361(1) dated 15.05.2024.

2. The Writ Petition is filed *inter alia* on the following grounds, viz.,

a) That the impugned order insofar as it subjects to assessment funds transferred from the NRE account of the petitioner's husband to the petitioner's domestic bank account is without jurisdiction, inasmuch as such sums are not chargeable to tax in terms of Sections 5 and 6 of the Income Tax Act.

b) That the orders under Section 148-A of the Act was made without effecting proper service of the notice under Section 148-A(b) of the Act and thus, entire proceedings would stand vitiated.

(c) That the impugned proceedings are barred, inasmuch as it is well beyond the limitation prescribed under Section 149 of the Act.

d) That impugned order levies tax on sums under Section 69-A of the Act which are not chargeable under Section 5(2) of the Act. Section 69-A of the Act does not provide for levy of tax on sums which are not not taxable under Section 5 of the Act. In other words, what is not taxable under Section 5 of the Act cannot be subject to assessment/levy under Sections 68 or 69 of the Act.

e) The impugned order thus circumvents Sections 5 and 6 of the Income Tax Act by subjecting to tax under Section 69-A of the Act that which cannot be subject to tax under Section 5 of the Act.

f) The impugned order has been passed without considering the submissions and documents submitted by the petitioner and thus suffers from non application of mind and violation of principles of natural justice.

3. To the contrary, the learned Standing Counsel for the respondent would submit that in view of effective alternate remedy, the Writ Petition ought not to be entertained.

4. Before I proceed to deal with the contentions raised by either side, it may be relevant to set out the brief facts.

4.1. The petitioner was married to S.Abubacker Sidhic some time in 2003. The petitioner purchased the property at R14, Green Acres, Kamarajar Nagar, 2nd Main Road, Perungudi, Chennai – 600 096 vide document No.4060 of 2015 on the file of Sub-Registrar, Neelangarai, Chennai on 28.05.2015 for a sale consideration of Rs.1,57,00,000/-. It is submitted that the above consideration was paid to the vendor by obtaining home loan from ICICI Bank Limited to the extent of Rs.1,20,00,000/-, while the remaining amount of Rs.37,00,000/- was paid by the petitioner's non resident Indian husband out of his earnings from consultancy assignments in Muscat during the assessment year 2016-2017.

4.2. That a notice dated 03.03.2023 under Section 148 A(b) of the Act was sent through ordinary post to her residential address at Karaikudi. The petitioner would submit that it has been more than 15 years since they moved to Chennai. The said notice was received by the petitioner only on 30.06.2023 through her relative. However, by the time, the petitioner received the notice, order under Section 148-A(d) of the Act was passed vide proceedings dated 31.03.2023 for issuance of notice under Section 148 of the Act. Pursuant thereto, a notice under Section 148 of the Act dated 31.03.2023 also came to be issued for the assessment year 2016-2017 and the same was followed by an intimation dated 29.06.2023, wherein the petitioner was informed that the petitioner's case was selected for the purpose of faceless assessment.

4.3. It is submitted that service of notice in the old place of address is invalid and thus all consequential proceedings stands vitiated. On receipt of the notice under Section 148 of the Act, the petitioner submitted its return for the assessment year 2016-2017 on 26.07.2023 through online, while also submitting a detailed reply on 22.07.2023. It was explained that the funds for purchase of property was sourced through housing loan obtained from ICICI Bank to the extent of Rs.1,20,00,000/- and the remaining amount of Rs.37,00,000/- represents the income of her non resident husband earned outside India. The objection was however rejected and a notice under Section 143(2) read with Section 147 of the Act dated 02.08.2023 came to be issued requiring the petitioner to provide supporting documentary evidence in support of the claim in her returns pursuant to the notice issued under Section 148 of the Act.

4.4. At this stage it may be relevant to note that the petitioner had earlier filed a Writ Petition before this Court in W.P.(MD)No.21481 of 2023 challenging the order passed by the respondent under Section 148-A(d) and the notice under Section 148-A of the Act dated 31.03.2023 and consequential notice under Section 142(1) of the Act dated 04.08.2023. This Court vide order dated 21.03.2024 disposed of the above Writ Petition, after observing that the issue is at the stage of enquiry and that the petitioner would be provided with the opportunity of personal hearing and also directed the respondents to consider the case of the petitioner vide her reply dated 22.07.2023 and pass orders on merits and in accordance with law.

4.5. Thereafter, a series of notices came to be issued under Section 142 of the Act, dated 16.04.2024, 18.04.2024 and 25.04.2024, to which the petitioner submitted her reply dated 29.04.2024. In her reply, it was stated that the petitioner would require time to retrieve details and sought for a week time to furnish the remaining documents, sought for by the respondent and also submitted that the notice dated 25.04.2024 under Section 142(1) of the Act was not in compliance with the orders of this Court in W.P.(MD)No.21481 of 2023 dated 21.03.2024. This was followed by another notice under Section 142(1) of the Act dated 29.04.2024, wherein it was clarified by the respondent that the order of this Court in W.P.(MD)No.21481 of 2023 does not impose any restrictions on the respondent to call for any additional information, while clarifying that the additional information that was sought for vide notice dated 25.04.2024 is required to verify the genuineness of purchase of immovable property and the income declared in the return of income in response to the notice under Section 148 of the Act. The petitioner once again responded vide letter dated 02.05.2024 by reiterating that there is a direction of this Court to consider the points raised by the petitioner vide her reply dated 22.07.2023, while assuring to submit the documents required to substantiate her reply dated 22.07.2023 and 26.07.2023.

4.6. The respondent thereafter issued another show cause notice dated 06.05.2024, wherein the following variations were proposed to be made and the petitioner was called upon to submit her objection viz.,

a) Investment in immovable property to the extent of Rs.37,00,000/- was treated as unexplained investment under Section 69 of the Act.

b) Credit in Bank account to the extent of Rs.81,03,175/-, out of which, the assessee has only declared a sum of Rs.5049/- received as income and a sum of Rs.16,80,000/- was explained as having been used for investment in immovable property, which has already been subjected to tax as unexplained income and thus, remaining amount of Rs.64,18,126/- was sought to be treated as unexplained money in the hands of assessee as per provisions of Section 69-A of the Act.

c) During the relevant year, the petitioner had repaid the principal amount of housing loan to the extent of Rs.33,96,647/-, which was made through cheques. A verification of the saving bank account however revealed that there are no corresponding debits in the saving bank account of the petitioner. Further, the petitioner has failed to prove sources for such pre-payment of principal and EMI of the said loan. In view thereof, the amount of

Rs.33,96,647/- was proposed to be treated as unexplained money in the hands of assessee.

4.7 The petitioner in response to the notice dated 06.05.2024 submitted the documents including sale deed of the rental property, rental agreements and also sought for time. Though it was stated in the notice dated 06.05.2024 that personal hearing by way of Video Conference is provided *suo motu* through separate notice, no separate notice has been issued in consequence to the notice dated 06.05.2024, while informing the respondent as the 'seek Video Conference' option was also not working.

4.8 On 09.05.2024, a show cause notice was issued wherein it was stated that the petitioner had still not filed the following documents:

> *(a) Copy of the purchase deed of the property in question.*
>
> *(b) Proof with regard to sources of funds to the tune of Rs.37 lakhs claimed to have been received from your husband and proof for the claim that the income received by your husband in the capacity of NRI is not taxable in India (copies of returns of income filed in foreign country in support of the same may be provided).*

(c) Copy of loan statement with sources for repayments during the year under consideration and bifurcation of principal and interest payments.

(d) Sources for credits appearing in your savings bank account statement with documentary evidences.

5. In view of the fact that there is a threat of proceedings becoming time barred, the petitioner was requested to provide details on 10.05.2024, while recording that the petitioner had made partial submissions vide its reply dated 09.05.2024 and the link and password for joining video conference was also sent to the registered email id. On 10.05.2024, the petitioner once again submitted her reply *inter alia* reiterating that the income earned by the petitioner's husband in Muscat, Oman is not liable to tax and the petitioner was not able to submit the copies of return of income filed in Oman, inasmuch as there is no tax charged in Oman. The petitioner also furnished the details of landlord agreement to the extent of Rs.2,88,000/- and that the Bank statement of the petitioner's husband was also furnished to show how the credit in Bank account to the extent of Rs.64,18,126/- was received. The impugned order of assessment was thereafter passed on 15.05.2024 confirming all the three proposals viz.,

SI.No	*Description*	*Amount (in Rs)*
3.	*Income as per the return of income filed in response to notice u/s 148 of the Act (Adjusted towards current year losses claimed in the Return of Income)*	*5,049/-*
4.	*Variation on account of addition u/s 69 on account of unexplained investment in immovable property.*	*37,00,000/-*
5.	*Variation on account of addition u/s69A on account of unexplained credits in bank account of assessee*	*64,18,126/-*
6.	*Variation on account of addition u/s 69A on account of repayment of housing loan principal amount and EMI*	*33,96,647/-*

a) A perusal of the impugned order of assessment would show that the petitioner's submission that her husband was an NRI was found unacceptable and thus, the amount of Rs.37,00,000/- was treated as unexplained income in the hands of the assessee.

b) That with regard to the amount of Rs.64,18,126/-, the impugned order finds that even during the Video Conference, the petitioner failed to prove the sources for such credit except to state that the credit made was from her husband's account and that her husband was an NRI was also not demonstrated by the petitioner with material evidence and thus the above amount of Rs.64,18,126/- was treated as unexplained income in the hands of the assessee.

c) With regard to repayment of housing loan to the extent of

Rs.33,96,647/-, the proposal was again confirmed, inasmuch as the petitioner failed to prove the sources for such repayment of principal amount of loan.

d) That in respect of income from other sources to the tune of Rs.5049/-, the assessee had declared the same only after issuance of the notice and thus the objection was rejected.

6. The question as to whether the petitioner's husband was a non resident Indian was found as not having been established by the petitioner with documentary evidence. Similarly with regard to the amount of Rs.64,18,126/- and Rs.37,00,000/- it is found that the petitioner failed to prove the genuineness of the sources with material evidence.

7. All these are essential questions of fact which are disputed. It is trite law that this Court under Article 226 of the Constitution, would be loathe in interfering with the orders of assessment when there is an effective alternative remedy available, more so, when there is a need to examine disputed questions of facts, for examination of disputed question of facts is normally alien to jurisdiction under Article 226 of the Constitution.

8. In view thereof, this Writ Petition challenging the impugned orders dated 15.05.2024 are rejected. The petitioner is at liberty to file an appeal, if any appeal is filed within a period of 3 weeks from the date of receipt of copy of this order, the same shall be entertained without reference to limitation, subject to complying with other conditions relating to appeal including pre-deposit if any. It is made clear that I have not examined the merits and the observation is only for the limited purpose of examining whether the writ petition ought to be entertained or otherwise. If any appeal is filed within the period stipulated i.e., 3 weeks from the date of receipt of copy of this order the same shall be disposed of by the appellate authority uninfluenced by the observation made above.

9. Accordingly, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

30.10.2024

NCC:yes/no
Index:yes/no
Internet:yes/no
Nsr

MOHAMMED SHAFFIQ, J.

Nsr

To:

The Income Tax Officer,
Ward 1, Karaikudi – 630 002.

W.P.(MD)No.13829 of 2024

30.10.2024