BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.09.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P(MD)Nos.18697 of 2022 & 17209 of 2023
and
W.M.P(MD)Nos.13602 & 13604 of 2022 and 14415 of 2023

DJ Alagendran Automobiles Private Limited,
Represented by its Director,
J.Venkatesh Durai. ... Petitioner
(In Both Cases)

Vs.

1.The Deputy Commissioner of Income Tax,
Circle 1(1), 2nd Floor, Trichy-Main Building,
Williams Road, Cantonment,
Trichy-620 015.

2.The Principal Chief Commissioner of Income Tax,
Tamil Nadu & Puducherry,
Main Building, 121 MG Road,
Nungambakkam,
Chennai-600 034.

3.The Income Tax Officer,
Ward-1(1), 2nd Floor,
Trichy-Main Building,
Willaims Road, Cantonment,
Trichy-620 015. ... Respondents
(In Both Cases)

Prayer in W.P(MD)No.18697 of 2022 : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records in Din and Order No:ITBA/COM/F/17/2022-23/1044059969(1), dated 25.07.2022 on the file of the first respondent relating to the assessment year 2014-2015 and quash the same and pass such order or further orders.

Prayer in W.P(MD)No.17209 of 2023 : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records in DIN: ITBA/AST/S/147/2023-24/1053153412(1), dated 25.05.2023 on the file of the fourth respondent relating to the Assessment Year 2014-2015 and quash the same and pass such order or further orders.

In Both Cases:

For Petitioner : Mr.G.Baskar

For Respondents : Mr.N.Dilip Kumar
Standing Counsel

COMMON ORDER

In W.P(MD)Nos.18697 of 2022 & 17209 of 2023, proceedings under Section 148(A)(d) of the Income Tax Act, 1961 [hereinafter referred to as "the Act"] was challenged. Thereafter, the respondent has proceeded to complete the assessment under Section 147 read with Section 144B of the Act after issuing notice under Section 148 of the Act. In view of the subsequent events, viz., the passing of the order of assessment, the challenge to the order under Section 148A(d) of Act may no longer survives. In this circumstance, this Court would confine itself to the challenge to the impugned order under Section 147 alone.

2. The petitioner was incorporated during the financial year 2013-2014 and engaged in retail trade of Automobile Spare Parts. Though the petitioner was incorporated during the financial year 2013-2014, it commenced its operation only during the financial year 2018-2019. The petitioner during the financial year 2013-2014 relevant to the assessment year 2014-2015, purchased a property at Trichy from one Thothappa Naina Mohammed Sirajuddin for a consideration of Rs.3,84,39,166/- vide sale deed executed on 12.06.2013 registered as document No.3308 of 2013 before the Sub Registrar, Trichy. It is further submitted by the learned Counsel for the petitioner that the above property was purchased by availing a term loan from Karur Vysya Bank, Trichy and a sum of Rs.2,14,00,000/- was borrowed from a partnership firm, viz., "DJ Automobiles Company". It is submitted by the learned Counsel for the petitioner that only the remaining sum of Rs.83,430/- alone was met out of internal accruals. The impugned order however proceeds on the basis that the source for purchase of property remained unexplained in view of the failure on the part of the petitioner to furnish complete details along with details of source of purchase of the said property. Therefore, a sum of Rs.3,84,39,166/- was arrived at as the income of the assessee under Section 69 of the Act.

3. It is submitted by the learned counsel for the petitioner that the purchase of the property mentioned supra was brought to the notice of the respondent authorities vide letter, dated 03.06.2022, wherein it has been stated as under:

> *"On 12th June 2013 our company had acquired an immovable property Rs.3,84,39,166/-.*
>
> *The said amount was paid as follows:*
>
> *1. Term loan availed from Karur Vysya Bank Limited Rs.1,69,55,736/-*
>
> *2.Unsecured loans obtained from the partnership Firm "DJ AUTOMOBILES COMPANY" Rs.2,14,00,000*
>
> *(PAN: AADFD4183G)*
>
> *3. By cheques from the company Rs.83,430*
>
> *TOTAL Rs.3,84,39,166*

For the first item of loan availed from KVB Limited, the bank statement is enclosed (annexure I)

For the RTGS payments made by the Firm to the seller of the property directly of Rs.214 lacs on various days, the Bank statement of the said firm (DJ Automobiles Company) is enclosed (Annex II)

From the above submissions it is abundantly clear that the cost of acquisition was met out of borrowings, and no income has escaped from assessment.

Any other information or explanations will be offered when called for.

Hence, we fervently hope that, based on the above explanations, it is not a fit case for issuing a Notice u/s 148, and hence it is requested to drop the proposed re assessment proceedings."

4. However, the petitioner was unable to respond to the notice issued under Section 148 of the Act as he was facing criminal proceedings.

5. It is submitted by the learned Counsel for the petitioner that 148 A proceedings was issued by the jurisdictional officer. However, the above reply has apparently not been place before the officer, who proceeded to complete the

assessment under Section 147 of the Act. It is submitted by the learned Counsel for the petitioner that if the petitioner was granted an opportunity, he would have demonstrated that the entire assessment is completely lacking jurisdiction.

6**.** The learned counsel for the petitioner would submit that even if the reply filed in response to the notice under Section 148 A(b) had been examined, the impugned order of assessment may not have been passed. However, the respondent authority who passed the order under Section 147 of the Act did not have the benefit of his reply which was filed pursuant to the proceedings under Section 148 A of the Act. It was thus submitted by the learned counsel for the petitioner that he may be granted one final opportunity, taking into account the peculiar facts and circumstances.

7. The learned Senior Standing Counsel for the respondent would submit that this is an appealable order and therefore, the petitioner ought to have availed the statutory remedy. Thus the writ petition ought not to be entertained.

8. While this Court is conscious of the fact that normally this Court would not entertain the writ petition when a statutory remedy is available and there is some merit in the submission of the learned Counsel for the petitioner that he was unable to participate in the proceedings under Section 148 of the Act, only in view of the fact that he was facing criminal proceedings and would submit that he had participated in the proceedings under Section 148 A of the Act by filing its response and that the objection filed in response to the notice under Section 148A was also not considered while framing the assessment under Section 147 of the Act.

9. In view of the peculiar facts set out supra, this Court is inclined to set aside the order of assessment under Section 147 of the Act while remanding the matter back to the Assessing Authority to grant one final opportunity to the petitioner to put forth his objections. The petitioner is at liberty to submit its objections within a period of four weeks from the date of receipt of a copy of this order. If any such reply is filed, the same shall be considered and orders shall be passed after affording a reasonable opportunity of hearing to the petitioner. If such objections are not filed within the stipulated period, i.e., four

weeks from the date of receipt of a copy of this order, the impugned order shall stand restored.

10**.** In the result, both the writ petitions stand disposed of. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions stand closed.

13.09.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To:

1.The Deputy Commissioner of Income Tax,
Circle 1(1), 2nd Floor, Trichy-Main Building,
Williams Road, Cantonment,
Trichy-620 015.

2.The Principal Chief Commissioner of Income Tax,
Tamil Nadu & Puducherry,
Main Building, 121 MG Road,
Nungambakkam,
Chennai-600 034.

3.The Income Tax Officer,
Ward-1(1), 2nd Floor,
Trichy-Main Building,
Willaims Road, Cantonment,
Trichy-620 015.

MOHAMMED SHAFFIQ, J.

BTR

W.P(MD)Nos.18697 of 2022 & 17209 of 2023

13.09.2024