IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 24.06.2025

Coram
The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.3906 of 2025
and
W.M.P.Nos.4322 & 4324 of 2025

Devaraj Ramasamy Naidu ...Petitioner

Vs.

1 The Assistant Commissioner of Income Tax
Non-corp, Circle -2 CBE
Coimbatore Main Building,
63, Race Course Road, Coimbatore – 641018.

2. The Assessment Unit
Income Tax Department, New Delhi. ...Respondents

Prayer

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for records from the file of the first respondent and to quash the impugned order in ITBA/AST/S/147/2024-25/1065844956(1) dated 20.06.2024 passed under Section 147 r/w Section 144 B of the Income Tax Act, 1961 and the consequential impugned notice in DIN : ITBA/PNL/S/271(1) (C) / 2024-25/1065845046(1) issued under Section 271 (1) (C) of the Act dated

20.06.2024 passed by the second respondent for the assessment year 2013-14 as illegal.

For Petitioner : Mr.Raghavrajeev Menon

For Respondents : Dr.B.Ramaswamy, Senior Standing Counsel

Order

The challenge in this Writ Petition is to the order passed by the first respondent under Section 147 r/w Section 144 B of the Income Tax Act, 1961 (for short, I.T.Act) dated 20.06.2024 and the consequential impugned notice issued under Section 271 (1) (C) of the Act dated 20.06.2024 passed by the second respondent for the assessment year 2013-14 and to quash the same.

2. Mr.Raghavrajeev Menon, the learned counsel counsel appearing for the petitioner would submit that initially, a notice under Section 148 of the Income Tax Act was issued by the respondent-Department dated 13.03.2020 seeking to reopen the assessment and challenging the same, the petitioner has filed a Writ Petition in W.P.No.9618 of 2021 and the said

Writ Petition was dismissed by the Court vide order dated 23.01.2024 and against the said dismissal, the petitioner filed an Appeal in W.A.No.1321 of 2024 and the Hon'ble First Bench of this Court vide Judgement dated 17.06.2025 allowed the Appeal and the quashed the order passed by the learned Single Judge. Therefore, the learned counsel contended that when the notice issued under Section 148 of the I.T.Act itself was quashed by the Hon'ble First Bench, any other proceedings initiated in furtherance of the said notice are also liable to be quashed and hence, prays for appropriate orders in that regard.

3. Dr.B.Ramaswamy, the learned Senior Standing Counsel for the respondents also fairly accepted the legal position.

4. Heard Mr.Raghavrajeev Menon, the learned counsel counsel appearing for the petitioner and Dr.B.Ramaswamy, the learned Senior Standing Counsel for the respondents and perused the materials placed on record., particularly, the judgment rendered by the Hon'ble Firs Bench of this Court in W.A.No.1321 of 2024 dated 17.06.2025.

5. In the case on hand, the challenges are made to the orders passed by the first respondent dated 20.06.2024 passed under Section 147 r/w Section 144 B of the Income Tax Act, 1961 and the consequential notice issued by the second respondent under Section 271 (1) (c) of the Act dated 20.06.2024 for the assessment year 2013-14.

5.1 When the Writ Petition is taken up for hearing today, the learned counsel for the petitioner has brought to the notice of this Court of the fact that the initially, a notice was issued by the respondent-Department under Section 148 of the Act dated 13.03.2020, seeking to reopen the assessment and the same was challenged by the petitioner by way of filing W.P.No. 9618 of 2021 and the said Writ Petition was dismissed by this Court vide order dated 23.01.2024 and aggrieved by the same, the petitioner went on Appeal before the Hon'ble First Bench, wherein, the notice issued under Section 148 of I.T.Act itself was quashed vide judgment dated 17.06.2025, by holding that there was no reason available to arrive at a conclusion that the income of the petitioner has escaped to issue notice under Section 148 of

I.T. Act. In this context, it would be apposite to refer to the relevant para from the said judgment, which is extracted herein below:-

> " 9. Therefore, the very ground on which the notice dated 13.3.2020 under 148 of the said Act was issued to re-open the assessment was considered by the Assessing Officer while originally passing the assessment order dated 24.2.2016. This itself demonstrates the fact that notice dated 13.3.2020 under Section 148 of the said Act seeking to re-open the assessment for the Assessment Year 2013-2014 is based on mere change of opinion. It will be pertinent to reproduce paragraph (14) of a judgment of the Bombay High Court in Aroni Commercials Ltd v. Deputy Commissioner of Income-tax-2(1) 2 and it reads as under:
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> "14. We find that during the assessment proceedings the petitioner had by a letter dated July 9, 2010, pointed out that they were engaged in the business of financing, trading and investment in shares and securities. Further, by a letter dated September 8, 2010, during the course of the assessment proceedings on a specific query made by the Assessing Officer, the petitioner has disclosed in detail as to why its profit on sale of investments should not be taxed as W.A.No.1321 of 2024 business profits but charged to tax under the head "Capital gains". In support of its contention the petitioner had also relied upon the

Central Board of Direct Taxes Circular No.4 of 2007, dated June 15, 2007 (The reasons for reopening furnished by the Assessing Officer also places reliance upon the Central Board of Direct Taxes Circular dated June 15, 2007). It would, therefore, be noticed that the very ground on which the notice dated March 28, 2013, seeks to reopen the assessment for the assessment year 2008-09 was considered by the Assessing Officer while originally passing the assessment order dated October 12, 2010. This by itself demonstrates the fact that the notice dated March 28, 2013, under section 148 of the Act seeking to reopen the assessment for the assessment year 2008-09 is based on mere change of opinion. However, according to Mr.Chhotaray, learned counsel for the Revenue, the aforesaid issue now raised has not been considered earlier as the same is not referred to in the assessment order dated October 12, 2010, passed for the assessment year 2008-09. We are of the view that once a query is raised during the assessment proceedings and the assessee has replied to it, it follows that the query raised was a subject of consideration of the Assessing Officer while completing the assessment. It is not necessary that an assessment order should contain reference and/or discussion to disclose its satisfaction in respect of the query raised. If an Assessing Officer has to record the consideration bestowed by him on all issues raised by him during the assessment proceedings even where he is satisfied then it would be impossible for the Assessing Officer to complete all the assessments which are required to be scrutinised by him under section 143(3) of the Act. Moreover, one must not forget that the manner in which an assessment order is to be drafted is the sole domain of the Assessing Officer and it is not open to an assessee to insist that the assessment order must record all the questions raised and the satisfaction in respect thereof of the Assessing Officer. The only requirement is that the Assessing Officer ought to have considered the objection now raised in the grounds for issuing notice under section 148 of the Act, during the original assessment proceedings. There can be no doubt in the present facts as evidenced by a letter dated September 8, 2012, the very issue of taxability of sale of shares under the head "Capital gains" or the head "Profits and gains from business" was a subject matter of consideration by the Assessing Officer during the original assessment proceedings leading to an order dated October 12, 2010. It would, therefore, follow that the reopening of the assessment by the impugned notice dated March 28, 2013, is merely on the basis of change of opinion of the Assessing Officer from that held earlier during the course of assessment proceeding leading to the order. This change of opinion does not constitute justification and/or reasons to believe that income chargeable to tax has escaped assessment."

10. Therefore, this change of opinion does not constitute justification or reason to believe that income chargeable to tax has escaped assessment.

11. When the entire basis of issuing the notice under Section 148 of the said Act was not sustainable, we are afraid, the learned Single Judge could not have gone into the merits and made observations against assessee that assessee has misled the department. The appeal is allowed and the impugned order dated 23.1.2024 is hereby quashed and set aside. There shall be no order as to costs. Consequently, interim application stands closed. "

5.2 In the light of the judgment rendered by the Hon'ble First Bench of this Court in a Writ Appeal, referred to supra, whereby, the notice issued under Section 148 of the I.T.Act was quashed, this Court is of the view that the proceedings, which are impugned herein can no longer survive and has to be quashed, inasmuch as, such proceedings are nothing but culmination of notice issued Section 148.

6. Accordingly, the Writ Petition is allowed. Consequently, the impugned order passed by the first respondent under Section 147 r/w Section 144 B of the Income Tax Act, 1961 dated 20.06.2024 and the consequential impugned notice issued by the second respondent under Section 271 (1) (C) of the Act dated 20.06.2024 are quashed. No costs. Consequently, connected miscellaneous petitions are closed.

24.06.2025

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Index : yes/no
To
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2. The Assessment Unit
Income Tax Department, New Delhi.

Krishnan Ramasamy,J.,

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