IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2025

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.5246 of 2024
and
W.M.P.Nos.5768, 5770, 5771, 5773 and 5774 of 2024

BWCI Pension Trustees Limited,
P.O. Box No.68, Albert House,
South Esplanade, St.Peter Port,
Guernsey, GY13BY,
Represented by its Director,
Ms.Anna Gray .. Petitioner

Vs.

1. The Commissioner of Income Tax,
   International Taxation,
   16 BSNL BLDG Tower 1,
   4th Floor, Income Tax Office,
   Greams Road, Chennai 600 006.

2. The Deputy Commissioner of Income
   Intl Tax 1(1) Chennai,
   Room No.8713, BSNL Building, 4th Floor,
   Income Tax Office, BSNL Tower,
   No.16, Greams Road,
   Chennai 600 006.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records connected with the impugned order dated 11.05.2023 bearing No.ITBA/COM/F/17/2023 24/1052749779(1) passed by the 2nd respondent received by the petitioner vide Email dated 12.10.2023 and to quash the same as well as the proceedings pursuant thereto and consequently direct the 2nd respondent to provide an oppotunity to the petitioner to present its case before passing an assessment order under Section 144 r/w Section 147 and 144 C(3) of the Income Tax Act, 1961.

For Petitioner : Mr.P.V.Balasubramaniam

For Respondents : Mr.D.Prabhu Mukunth Arunkumar
Standing Counsel

ORDER

The present writ petition is filed challenging the order dated 11.05.2023 passed under Section 144 read with Section 147 read with Section 144C(3) of the Income Tax Act, 1961.

2. It is submitted by the learned counsel for the petitioner that the show cause notice was issued as to why the capital gains that has accrued on account of sale of unlisted shares should not be taxed in terms of Section 112(1)(c)(iii) of the Income Tax Act. However, the order of assessment came to be passed on the premise that the above transactions

are liable in terms of Section 112 (1) (c) (ii) of the Income Tax Act. It is submitted that since the impugned order makes a departure from the show cause notice the petitioner were never in a position to putforth their objection as to how Section 112 (1)(c)(ii) of the Income Tax Act would not get attracted.

3. The learned counsel for the respondent would submit that this is an appealable order and the writ petition ought not to be entertained.

4. This Court is conscious of the fact that writ petitions under Article 226 of the Constitution of India would not be entertained normally if statutory remedy is availed. However, existence of alternate remedy is not an embargo or an absolute bar to exercise power under Article 226 of the Constitution of India but a self-imposed restriction and the following circumstances viz., violation of principles of natural justice or lack of jurisdiction or error apparent on the face of the record are some of the exceptions carved out to the rule of alternate remedy for exercise of discretion under Article 226 of the Constitution of India.

5. It is trite law that show cause notice forms the foundation, thus departure from Show Cause Notice or if order traverses beyond Show Cause Notice, it is necessary that the petitioner is put on notice on the basis of which the order was intended to be made. Else, as submitted by the learned counsel for the petitioner, the opportunity to reply becomes illusory and the notice would be an empty formality if the order is made on new / different grounds from the notice

6. In view thereof, the impugned order is set aside. The petitioner shall treat the impugned order as show cause notice and submit their objections along with the Email Id to which the future correspondence / communication must be sent within a period of 4 weeks from the date of receipt of a copy of this order. If any such objections are filed, the same shall be considered by the respondent and orders shall be passed in accordance with law after affording a reasonable opportunity of hearing as expeditiously as possible.

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

21.01.2025

Speaking (or) Non Speaking Order
Index:Yes/No
Neutral Citation: Yes/No
spp

To:

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MOHAMMED SHAFFIQ, J.

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