IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 18.06.2025
Coram
The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.34803 of 2022
and
W.M.P.Nos.34228 & 34229 of 2025

Sri.V.Ponrraaj ...Petitioner

vs.

1. The Government of India
Ministry of Finance
Income Tax Department,
National Faceless Assessment Centre, Delhi.

2. The Government of India,
Ministry of Finance
Income Tax Department,
Rep. by Joint Commissioner,
Office of the Joint Commissioner of Income Tax,
Circle 1, TPR, Income Tax Office,
No.121, Adams Building, Sixty Feet Road,
Tiruppur. - 641 602. ...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 connected with the impugned order of the second respondent bearing DIN & Notice No.ITBA/AST/S/148/2020-21/1031857184(1) dated 28.03.2021 and impugned consequential notice of demand issued by the first respondent bearing DIN No.ITBA/AST/S/156/2021-22/1041226800(1), the impugned consequential assessment order passed by the first respondent bearing DIN No.ITBA/AST/S/147/2021-22/1041226629(1) dated 22.03.2022 impugned consequential show cause notice for penalty under Section 271 (1) (c) of the Income Tax Act, 1961 bearing DIN No.ITBA/PNL/F/271(1)(c)/2022-23 / 1043997171(1) issued by the first respondent dated 22.07.2022 and the impugned consequential notice under Section 274 read with Section 271 F of the Income Tax Act, 1961 issued by the second respondent dated 10.08.2022 bearing DIN : No.ITBA/PNL/F/271F/2022-23/1044580886(1) and to quash the same as arbitrary.

For Petitioner : Mr.S.Silambanan
Senior Counsel

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

Order

The challenge in this Writ Petition is to the Notice issued by the second respondent dated 28.03.2021 and the consequential notice of demand issued by the first respondent, the impugned consequential assessment order passed by the first respondent dated 22.03.2022; consequential show cause notice for penalty under Section 271 (1) (c) of the Income Tax Act, 1961 issued by the first respondent dated 22.07.2022 and the impugned consequential notice under Section 274 read with Section 271 F of the Income Tax Act, 1961 issued by the second respondent dated 10.08.2022 and to quash the same.

2. Mr.S.Silambanan, learned Senior Counsel appearing for the petitioner would submit that the petitioner is a Legal Practitioner by profession; that the petitioner has been assessed to income tax and has been paying tax ever since 2011-12; that in the year 2012, the income received by the petitioner was only a paltry sum, hence, the petitioner's Auditor omitted to file income tax returns for the year 2013-14, however, the petitioner received a notice under Section 148 of the Act dated 28.03.2021, to which, the petitioner filed a reply dated 22.07.2021 stating that there was no income for the subject year and that the petitioner was not liable to pay any tax, but, the petitioner was again issued with a notice for assessment under Section 148 dated 30.07.2021 asking the petitioner to file return of income and despite filing reply, the respondents proceeded to initiate the impugned proceedings under Section 148 of the Act.

2.1 It is the main contention of the learned counsel for the petitioner that the entire impugned proceeding initiated by the respondents is barred by limitation, inasmuch as, the limitation period for the AY 2013-2014 expired as early as on 31.03.2020, in the event, the respondent intended to initiate proceedings under Section 148 of the Act, they ought to have initiated the same within a period of six years from the end of the relevant assessment year, whereas, in the present case, notice under Section 148 was issued only on 28.03.2021, i.e. much after the expiry of six years limitation period, therefore, the same is barred by limitation, also lacks jurisdiction and liable to be quashed.

3. Dr.B.Ramaswamy, learned Senior Standing Counsel for respondents, while reiterating the averments set out in the counter affidavit would submit that in terms of Section 149 (1) (b) of the Act though there was limitation for initiation of proceedings under Section 148 of the Act for the income that escaped from assessment above Rs.1,00,000/- is six years, as per which, the limitation period for the subject AY/FY expired as early as on 31.03.2020, however, he relied on Taxation and Other Laws (Relaxation and Amendment of certain Provisions) Act (in short, TOLA) by virtue of which, the limitation period for reopening of assessment under the Old regime was repealed and substituted by new provisions, whereby, new period of limitation for issuance of notice for reopening is extended to 10 years and therefore, submitted that there was no embargo on the respondent-Income Tax Department to reopen the assessment, even if, as on date of issuance of reopening notice under new law, the limitation period of six years under Section 149 (1) (b) of the Old Act has already expired. Hence, the notice issued by the respondents under Section 148 of the Act dated 28.03.2021 is sustainable.

3.1 Further, it is contended that by the learned Senior Standing Counsel that even after receipt of notice under Section 148, the petitioner has not filed return of income within 30 days from the date of receipt of such notice, which is mandatory nor furnished relevant documents and particulars in supporting of his claim, except merely, stating that "there was no income to pay the tax"; that even the plea with regard to jurisdiction was never ever raised by the petitioner in the reply filed by him, therefore, in such circumstances, the respondent is bound to pass the assessment order and accordingly, the same has been passed. Therefore, it is submitted that the impugned orders are sustainable in law and calls for no interference.

4. Heard the learned Senior Counsel appearing for the petitioner and the learned Senior Standing Counsel for respondents and perused the materials available on record.

5. The petitioner is a Legal Practitioner by profession. The petitioner was also running a School, named "Victory Industrial School and Admission and Information Centre' for enrolling students for Arts and Science and Engineering; As such, the petitioner was receiving money towards academic fees in his personal account and used to forward the amount to the University in the form of cash after withdrawing the amount from his account. As a result, there was a transaction for a sum of Rs.30,00,000/- during the FY 2012-13. According to the petitioner, he did no business and was earning only a paltry income during the relevant assessment year, therefore, the petitioner's Auditor did not file returns of income. However, the respondent issued a notice under Section 148 of the Income Tax Act, dated 28.03.2021 for the AY 2013-14.

6. It is the contention of the learned counsel for the petitioner that the notice issued under Section 148 of the Act and the consequential proceedings are barred by limitation, inasmuch as, the limitation period for the subject assessment year, viz. 2013-14 was expired as early as on 31.03.2020, whereas, notice under Section 148 came to be issued only on 28.03.2021 and hence, the respondents lacks jurisdiction to reopen the assessment. Per contra, it is the contention of the learned Senior Standing Counsel for the respondent-Income Tax Department that though in terms of Section 149 (1) of the Act, the limitation period for the subject AY expired on 31.03.2020, by virtue of TOLA, the respondent-Department is entitled to initiate proceeding under Section 148, inasmuch as, TOLA has relaxed the time periods for compliance of various actions under the Act, as it provided that if the due date for compliance of any action is falling within 20.03.2020 to 31.03.2021, then such an action can be done by 30.06.2021.

6.1 At this juncture, it would be apposite to extract the provisions of Section 149 (1) of Income Tax Act, which reads as under :-

> '149.(1) No notice under section 148 shall be issued for the relevant assessment year,-
>
> (a) if three years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b);
>
> (b) if three years, but not more than ten years, have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession books of accounts or other documents or evidence which reveal that the income chargeable to tax, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more for that year;'

6.2 A reading of the above section makes clear that if the income escaped is more than Rs.1,00,000/-, notice under Section 148 has to be issued within a period of six years from the end of the relevant assessment year. In the present case, the limitation period for the subject assessment year ends on 31.03.2020. Therefore, the respondents supposed to have issued notice under Section 148 of the Act on or before 31.03.2020, whereas, the notice under Section 148 was issued only on 28.03.2021 and therefore, the notice is barred by limitation.

6.3 Further, as rightly pointed out by the learned Standing Counsel for the respondent, in the present case, TOLA would be squarely applicable to the events, in which, any notice/proceedings/order etc., which was required to be issued for compliance of certain action falling in between 20.03.2020 and 31.03.2021, can be issued within the extended period, i.e. 30.06.2021. In the present case, notice under Section 148 dated 28.03.2021 was issued within the extended period of limitation. Therefore, I do not find force in the submissions made by the learned Senior Counsel for the petitioner. However, on the aspect of issuance of notices that were uploaded in the ITBA Portal on all five occasions is concerned, when admittedly, no response was received, atleast, the incumbent is supposed to have issued notice by registered Post through RPAD, however, the respondent failed to do so. Therefore, it is clear that, in the present case, ex parte order was passed, that too, the period also falls at the end of Covid. Further, in the present case, the petitioner is a non-filer of Returns. Therefore, taking into consideration of all aspects, this Court, in the interest of justice, is inclined to grant opportunity to the petitioner to file returns by filing reply to the show cause notice dated 28.03.2021.

6.4. Accordingly, this Court is inclined to pass/issue the following orders/directions.

i) The impugned order or notice of demand or any other consequential proceedings in pursuant to the notice issued under Section 148 dated 28.03.2021 passed by the respondent concerned are set aside and the matter is remanded for fresh consideration. The petitioner is directed to file reply/returns to the notice issued under Section 148 dated 28.03.2021 within a period of eight weeks from the date of receipt of a copy of this order or from the date, on which, the respondent-Department has kept open the Portal for filing ITR, whichever is later.

ii) Thereafter, the respondent concerned is directed provide an opportunity of personal hearing to the petitioner by issuing a 7 clear days notice

7. In the result, the Writ Petition is allowed. No costs. Consequently, connected miscellaneous petitioners are closed.

18.06.2025

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Index : yes/no
Neutral Citation : yes/no

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Krishnan Ramasamy,J.

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