BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	24.07.2024
Pronounced on	03.01.2025

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD)No.3584 of 2024
and
W.M.P.(MD)Nos.3537, 3538, 3539 of 2024

Sampath Thiruvalan ... Petitioner

Vs.

1.The Assessment Unit,
Income Tax Department,
New Delhi.

2.The Income Tax Officer,
Ward 1(1),
Trichy,
Trichy Main Building, Williams Road,
Contonment,
Trichy – 620 015. ... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorari, to call for the records in the file of the respondents and quash the impugned order under Section 147 r.w.s. 144B of the Income Tax Act, 1961 in PAN AADPT1305L dated 03.01.2024 in DIN ITBA/AST/S/147/2023-14/1059326216(1) by the first respondent for the A.Y. 2018-19.

For Petitioners : Mr.N.Murali Kumaran
Senior Counsel for
M/s.NV.Lakshmi

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

ORDER

In this Writ Petition, the petitioner has challenged the impugned order dated 03.01.2024 passed by the first respondent under Section 147 & 144B of the Income Tax Act, 1961 for the Assessment Year 2018-2019. The petitioner has challenged the impugned order on the ground of jurisdiction.

2. By the impugned order, the first respondent has disallowed an amount of Rs.86,54,545/- which was claimed by the petitioner as deduction towards the cost of improvement of immovable property with indexation.

3. This case is taken up for final disposal without counter affidavit of the respondents as only the question of law that arises for consideration in this Writ Petition is whether the impugned order dated 03.01.2024 passed by the first respondent pursuant to the order passed by the second respondent under Section 148A(d) of the Income Tax Act, 1961 on 05.04.2022 is valid or not?

4. The brief case of the petitioner is that the petitioner had earlier purchased an immovable property (land) measuring an extent of 2400 sq.ft. (1 ground) for a sum of **Rs.6,20,000/-** on **15.09.2011** together with stamp duty. The petitioners claims to have invested a sum of **Rs.70,00,000/-** for developing the aforesaid immovable property.

5. The petitioner claims to have sold the aforesaid property after it was built as a distress sale on **29.08.2017** for a sum of Rs.80,30,500/-.

6. The petitioner appears to have received a sum of **Rs.36,10,413/-** directly in cash and in cheque from the buyer. The balance sale amount of **Rs. 44,20,087/-** (i.e., Rs.80,30,500 - Rs.36,10,413) was directly paid by the buyer to REPCO Bank to settle a loan of the petitioner.

7. The petitioner however failed to file Return of Income under Section 139 of the Income Tax Act, 1961 for the Assessment Year 2018-2019. The Department had thus received an alert and therefore issued a notice dated 20.03.2022 to the petitioner under Section 148A(b) of the Income Tax Act, 1961 and called upon the petitioner to show cause as to why a notice under

Section 148 of the Income Tax Act, 1961 should not be served on the petitioner. The reason appended to the aforesaid notice reads as under:-

> SFT-012 (S) Sale by any person of immovable property SUB REGISTRAR OFFICE MANNACHANALLUR 1 Transaction amount related to the person 80,30,500 & TDS-194IA (R) TDS Statement – Sales Consideration on sale of immovable property (Section 194IA) VADIVEL BALAGANESHAN 1 Amount paid or credited 80,30,500.

8. In response to the same, the petitioner replied back on 28.03.2022. The petitioner admitted to the sale of the property and the receipt of total consideration of **Rs.80,30,500/-**. In the reply, the petitioner has categorically stated that the sale was a distress sale and that the sale actually resulted in a Net loss of **Rs.15,40,567/-** to the petitioner. The Statement of Total Income enclosed with the aforesaid reply reads as under:-

INCOME FROM CAPITAL GAIN:
LONG TERM CAPITAL GAIN

Sales Value		80,30,500
Less: Index Cost of Acquisition (620000/184X272)	9,16,522	
Less: Cost of Improvement (7000000/220X272)	86,54,545	
	95,71,067	95,71,067
Income from LTCG		- 15,40,567

Gross Total Income	(A)	- 15,40,567
Total Income		- 15,40,567
Say		- 15,40,567

TAX CALCULATIONS

Tax Payable	Nil

9. Disbelieving the explanation given by the petitioner, the second respondent proceeded to pass an order under Section 148A(d) of the Income Tax Act, 1961 on 05.04.2022 followed by a notice under Section 148 of the Income Tax Act, 1961 on 06.04.2022. The aforeaid Notice issued under Section 148 of the Income Tax Act, 1961 on 06.04.2022 was followed with Notices issued under Sections 143(2), 142(1) & 152(1) of the Income Tax Act, 1961 on 15.06.2023, 16.06.2023 & 26.07.2023 respectively.

10. The petitioner has furnished some of the documents called for and has also replied back. The petitioner has furnished the Bank Statement from State Bank of India (SBI) from whom the petitioner had purportedly taken a loan for a sum of Rs.25,00,000/-.

11. The specific case of the petitioner is that the impugned order dated 03.01.2024 has been passed by the first respondent without jurisdiction. It is therefore submitted that the impugned order is liable to be quashed as it was passed pursuant to the order passed by the second respondent under Section 148(d) of the Income Tax Act, 1961 on 05.04.2022.

12. The case of the petitioner is that sum of **Rs.47,11,000/-** was directly given as the loan by the firm called M/s.JL Properties and said loan was also repaid by the petitioner for over a period of time. It is to be noted that the petitioner himself is a partner of the said partnership concern to whom the construction activities was entrusted over under the Construction Agreement dated 22.03.2012.

13. At that stage, the total area of construction was only confined to 2432 sq.ft. i.e., 1504 sq.ft. on the ground floor and 928 sq.ft. on the first floor. The petitioner claims to have additionally constructed 595 sq.ft. on the second floor subsequently.

14. Disbelieving the explanation and the documents filed by the petitioner pursuant to the above notice, the first respondent has concluded that

the amount of **Rs.86,54,545/-** had not been properly explained and has thus concluded as follows:-

> **4.5 Point wise rebuttal of reply of the assessee including analysis of any case law relied upon:**
>
> From the submission of the assessee, it seen that assessee has failed to explain the Cost of Improvement with indexation claimed of **Rs.86,54,545/-,** even after the final show cause notice the assessee did not submit the evidence to explain the cost of Improvement claimed. Thus, the submission of the assessee has been duly considered but not found acceptable in absence of any supporting documentary evidence with respect to the claim of cost of improvement. In his contention the assessee has stated that the entire cost of construction cost as unexplained investment or undisclosed income is not warranted and requested to drop the taxing proposal in the SCN. Considering the same, in absence of evidence with respect to the cost of improvement the contention of the assessee is not found acceptable.
>
> **4.6 Conclusion drawn:**
>
> In view of the above discussion, in absence of any supporting documentary evidence, the transactions in claim of Indexed cost of improvement is considered sham/ manipulated transactions and the whole of unexplained cost of improvement of Rs.86,54,545/- up to the extent of sale consideration of Rs.71,13,978/- after reduce the cost of acquisition of Rs.9,16,522/- as suggested by the Review Unit, through which assessee has reduced the capital gain from sale consideration obtained, hence disallowed the claim of cost of improvement and the same is treated as unaccounted income u/s 69A of the I T Act as suggested by the review unit and added back to the total income for the year under consideration and taxed in view of the provision u/s 115BBE.

15. Arguing further, the learned Senior Counsel for the petitioner would submit that the impugned order is flawed and is therefore liable to be set aside. The learned Senior Counsel for the petitioner would submit that the petitioner should be an opportunity to explain the case afresh. It is submitted that the petitioner has indeed suffered loss and invested a sum of Rs.25,00,000/- + Rs. 47,11,000/- for putting up the construction and that the petitioner had suffered a loss of Rs.15,40,567/- from the distress sale.

16. It is further submitted that even otherwise, the invocation of Section 147 of the Income Tax Act, 1961 after the amendments was also without jurisdiction inasmuch as notice under Section 148 of the Income Tax Act, 1961 as also notice under Section 148A of the Income Tax Act, 1961 were issued beyond the period of limitation prescribed under Section 151(2) of the Income Tax Act, 1961.

17. It is submitted that the dispute pertains to the Assessment Year 2018-2019 (relevant Assessment Year 2017-2018). It is submitted that notice under Section 148 of the Income Tax Act, 1961 ought to have been issued on or before **31.03.2022**, whereas, the notice has been issued under Section 148 of

the Income Tax Act, 1961 on **06.04.2022**. It is submitted that the respondents have obtained sanction only from the Principal Commissioner of the Income Tax Department, whereas, the sanction should have been obtained from the Principal Chief Commissioner of Income Tax Department.

18. The learned Senior Counsel for the petitioner would draw attention to the proviso to Section 151 of the Income Tax Act, 1961 as it stood prior to amendment w.e.f. 01.04.2023. It is submitted that sanction prior to 01.04.2023, under the proviso to Section 151 of the Income Tax Act, 1961 was not obtained and therefore, there was no jurisdiction to issue a notice without the sanction of the **Principal Chief Commissioner** or **Principal Director General**, or, in their absence from the **Chief Commissioner** or **Director General**, as a period of three years had already lapsed from the end of the relevant assessment year.

19. That apart, it is submitted that the assessment could not have been made by Faceless Authority under Section 151A(2) of the Income Tax Act, 1961. It is submitted that invocation of Section 148A(b) of the Income Tax Act, 1961, on 20.03.2022 was by the Jurisdictional Officer, whereas the assessment has been made by the Faceless Authority.

20. It is submitted that by applying the Explanation to Section 147 of the Income Tax Act, 1961 in the light of the ratio of the Hon'ble Division Bench of the Bombay High Court in **Commissioner of Income-tax-56, Mumbai** Vs. **Jet Airways (l) Ltd.**, [2011] 331 ITR 236 : [2010] 195 Taxmann 117 (Bombay), it is not open for the respondent to invoke Section 69A of the Income Tax Act, 1961.

21. Adding further, the learned Senior Counsel for the petitioner would submit that at best, only Section 69 of the Income Tax Act, 1961 could have been invoked. In any event, the learned Senior Counsel for the petitioner would submit that the petitioner may be given one opportunity to explain the investments made by the petitioner in the development of the immovable property measuring an extent of 3027 sq.ft. From 2011 with proper records on the land measuring an extent of 2400 sq.ft.

22. The learned Senior Counsel for the petitioner has placed reliance of the following decisions:-

i. **Kankanala Ravindra Reddy** Vs. T**he Income Tax Officer and others**, dated 14.09.2023 passed by the Telegana High Court in W.P.No.25903 of 2022 etc. batch.
ii. **Hexaware Technologies Limited** Vs. **Assistant Commissioner of Income Tax and others**, dated 03.05.2024

passed by the Bombay High Court in W.P.No.1778 of 2023.

iii. **Martech Peripherals (P.) Ltd.** Vs. **Deputy Commissioner of Income-tax**, [2017] 394 ITR 733 (Madras) : [2017] 81 taxmann.com 73.

iv. **Siemens Financial Services Pvt. Ltd.** Vs. **Deputy Commissioner of Income Tax and others**, dated 25.08.2023 passed by the Bombay High Court in W.P.No.4888 of 2022.

v. **Holiday Developers (P.) Ltd.** Vs. I**ncome Tax Officer**, [2024] 159 taxmann.com 178 (Bombay).

23. *Per contra*, the learned Senior Standing Counsel for the respondents would submit that Sections 120 read with 124 and 130 of the Income Tax Act, 1961 prescribes the Jurisdiction of Income Tax Authorities, Jurisdiction of Assessing Officers and Faceless Jurisdiction of Income Tax Authorities respectively. It is submitted that Section 144B of the Income Tax Act, 1961 provides for faceless assessment of various assessments under Section 143(3) (Scrutiny Assessment), Section 144 (Best Judgment Assessment) and Section 147 (Reopened Assessment).

24. This Writ Petition is opposed by the learned Senior Standing Counsel for the respondents on the ground that there is a statutory estoppel against the petitioner questioning the Assessing Officer under Section 124(3)(a) of the Income Tax Act, 1961 which reads as under:-

> ***"124. Jurisdiction of Assessing Officers.—***
> *(1) ......*
> *(2) ......*
> *(3) No person shall be entitled to call in question the jurisdiction of an Assessing Officer—*
> *(a) where he has made a return under sub-section (1) of section 115WD or under sub-section (1) of section 139, after the expiry of one month from the date on which he was served with a notice under sub-section (1) of section 142 or sub-section (2) of section 115WE or sub-section (2) of section 143 or after the completion of the assessment, whichever is earlier;"*

25. It is further submitted that E-Assessment of Income Escaping Assessment Scheme 2022 provides for automated allocation. Faceless Jurisdiction of Income Tax Authorities' Scheme, 2022 defines "Automated Allocation". It is further submitted that in all cases where return is selected for scrutiny or where it is reopened, the selection is only by way of automation and the risk management strategy adopted which alone identifies the cases by using technological tools. Therefore, it is submitted that the contention of the learned Senior Counsel for the petitioner is completely misconceived.

26. It is submitted that the entire proceedings either under Section 148A or the reopened assessment under Section 147 were completely faceless. It is further submitted that the Jurisdictional Assessing Officer or Faceless

Assessment Officer, conduct proceedings only through virtual mode and no physical interaction is allowed and that is done only by way of E-proceedings.

27. It is submitted that in this case, the petitioner had all along participated in the reassessment proceedings without raising any objection regarding Jurisdiction. Therefore, as prescribed under Section 124(3) of the Act, the petitioner is precluded from raising this objection after the assessment order was passed. In this connection, a reference is made to the decision of the Hon'ble Supreme Court in **Deputy Commissioner of Income Tax (Exemption)** Vs. **Kalinga Institute of Industrial Technology**, (2023) 454 ITR 582 (SC).

28. As an answer to the above submission, the learned Senior Counsel for the petitioner submits that the Faceless Assessment Officer lacks jurisdiction to make addition. The learned Senior Counsel for the petitioner would further submit that the reopening is with regard to capital gains and addition is with regard to the sale of immovable property alone and legally, there is no bar to consider any issue that comes to the notice of Assessing Officer during the course of proceedings under Section 147 of the Income Tax Act, 1961.

29. The learned Senior Standing Counsel for the respondent would further submit that the petitioner admits that there is exclusion of time limit under the different provisions of Section 149 of the Income Tax Act, 1961 but contends they are not applicable to Section 151 of the Act. It is submitted that Section 151 of the Act provides the specified authority for the purposes of Sections 148 and 148A of the Act. Therefore, time limit for issuances of Notice under Section 148 of the Act is provided under Section 149 of the Act. It is further submitted that the exclusion of time provided under the fifth and sixth proviso are clearly attracted to this case.

30. The learned Senior Standing Counsel for the respondent would further submit that Notice under Section 148A(b) of the Act was issued on 20.03.2022 giving time till 28.03.2022 and therefore the 9 days from 20.03.2022 to 28.03.2022 shall therefore be excluded under the fifth proviso to Section 149 of the Act. It is therefore submitted that the notice under Section 148 of the Act following the order under Section 148A(d) has to be deemed to be issued before 31.03.2022 by excluding these nine days. In this case, the order under Section 148A(d) of the Act was passed on 05.04.2022 and notice under Section 148 of the Act was issued on the following day i.e., on 06.04.2022.

31. The learned Senior Standing Counsel for the respondents would further submit that as far as the submission in respect to the addition made under Section 69A of the Act is concerned, there are disputed questions of fact and therefore the petitioner should be relegated to workout the remedy before the Appellant Authority as the petitioner did not produce any proof for the construction expenses and no documents were produced to show the same. It is further submitted that the petitioner did not prove his claim regarding the cost of improvement and therefore, the indexation cost of improvement claimed by the petitioner towards computation of capital gain was disallowed and the consideration/money received out of sale proceeds was brought to tax under Section 69A of the Act, 1961.

32. The learned Senior Standing Counsel for the respondents has placed reliance on the following decisions:-

i. **Principal Commissioner of Income-tax (Central)-3, New Delhi** Vs. **Jakhotia Plastics (P.) Ltd.**, [2018] 94 taxmann.com 89 (Delhi)
ii. **N.Govindaraju** Vs. **Income-tax officer**, [2015] 377 ITR 243 : [2015] 60 taxmann.com 333 (Karnataka)

33. I have considered the arguments advanced by the learned Senior Counsel for the petitioner and the learned counsel for the respondent. I have also perused the documents filed in support of the present writ petition. I have also considered the decisions of the courts relied upon by the learned Senior Counsel for the petitioner and the learned Senior Standing Counsel for the respondents.

34. Admittedly, the dispute pertains to the Assessment Year 2018-19. The last date of the aforesaid Assessment Year was **31.03.2019**. With effect from 1.4.2021, the ecosphere of the assessment proceedings had undergone tectonic changes.

35. The judgement of the Hon'ble Supreme Court in **GKN Drive Shafts (India) Ltd. Vs. Income Tax Officer & Ors.** reported in **(2003) 259 ITR 19 (SC)** was statutory incorporated into the Income Tax Act, 1961 with effect from the aforesaid date. Not only a notice but also speaking order had to be passed before issuance of notice under Section 148 of the Income Tax Act, 1961 as amended with effect from the aforesaid date. There are statutory restrictions in place.

36. As per the 1st proviso to Section 148 of theIncome Tax Act, 1961 as amended with effect from **01.04.2021,** no notice under aforesaid section shall be issued unless there is information with the Assessing Officer which suggest that the income chargeable to tax has escaped assessment in the case of assessee for the relevant assessment year and the assessing officer has obtained prior approval of the specified authority to issue such notice.

37. As per the 3rd proviso to Section 149 of the Income Tax Act, 1961, for the purpose of computing the period of limitation, the time allowed to an assessee to reply to the Show Cause Notice issued under Clause (b) of Section 148A of theIncome Tax Act, 1961 or the period during which the proceedings under Section 148A of the Income Tax Act, 1961 has been stayed by an order of injunction of any Court has to be excluded.

38. It is the case of the petitioner that the notice dated **06.04.2022** issued under Section 148 of the Income Tax Act, 1961 was beyond the period of limitation as the last date for issuance of the notice expired on **01.4.2022**.

39. However, if the 3rd proviso to Section 149 of the income tax is applied, the time between **20.03.2022** being the date of issuance of show cause notice issued under clause (b) of Section 148A of the Income Tax Act, 1961 and the time given for reply to the same till 28.3.2022 has to be excluded from petitioner limitation.

40. Therefore, the limitation for issuance of notice under Section 148 of the Income Tax Act, 1961 will stand extended till **08.04.2022**. Therefore, the argument that the notice under Section 148 of theIncome Tax Act, 1961 on **06.04.2022**was beyond the period of limitation has to be rejected it has to be held that the limitation did not expire on **31.03.2022** under Section 148 of the Income Tax Act, 1961. Accordingly, the above objection of the petitioner stands overruled.

41. In this case, the notice that was issued on **20.3.2022** under Section 148A (b) of theIncome Tax Act, 1961 clearly states that the said notice itself was issued after obtaining prior approval of the Principal Commissioner of Income Tax Madurai-1 which was appointed on **19.03.2022** vide **Reference No. 100000029738669**.

42. Similarly, the order that was passed on **05.04.2022** under Section 148A (d) of theIncome Tax Act, 1961, also states that the order was passed with the approval of the the Principal Commissioner of Income Tax Madurai-1.

43. Similarly, the notice issued under Section 148 of the Income Tax Act, 1961 on **06.04.2022** also states that, it was issued after obtaining the prior approval of thePrincipal Commissioner of Income Tax Madurai-1 vide **Reference No.100000029738669**.

44. Since the notice has been issued within **3 years** after excluding eight days time given for giving a reply to notice dated **20.03.2022** issued under Section 148A (b) of theIncome Tax Act, 1961,till **28.3.2022**. Thus, eight days has to be excluded for the purpose of computation of limitation under Section 149 of the Income Tax Act,1961 in terms of the 3rdprovisio to the said Section.

45. Therefore, respondents were not required to obtain sanction under Section 151(ii) of the Income Tax Act, 1961 of the Principal Chief Commissioner or the Principal Director-General or Chief Commissioner of Director-General as the approval/sanction was obtained from the Principal

Commissioner of Income Tax Madurai-1 on **19.3.2022** vide **Reference No. 100000029738669** under Section 151(i) of theIncome Tax Act, 1961**.** It has to be construed that the proceedings initiated underSection 148 of theIncome Tax Act, 1961 on **06.04.2022** did not suffer from any irregularity.

46. In this case, both the notice dated **20.03.2022** issued under Section 148A(b) of the Income Tax Act, 1961 and the consequential speaking order dated **05.04.2022** passed under Section 148A (d) of the Income Tax Act, 1961 were issued in time for issuance of a notice under Section 148 of the Income Tax Act, 1961.

47. Under amended Section 148 of the Income Tax Act, 1961, as in force with effect from **01.04.2021**, a notice for the relevant assessment year had to be either issued within **3 years** from the end of the relevant assessment year or in any other case within a period of 10 years from the end of the assessment year where the Assessing Officer has in his possession books of account or other documents or evidence which reveal that income chargeable to tax, represented in the form of-

(i)an asset;

(ii)expenditure in respect of a transaction or in relation to an event or occasion; or

(iii)an entry or increase in the books of account,

which has escaped assessment amounts to or is likely to amount toRs. 50,00,000/-or more.

48. This a case where no regular returns was filed by the petitioner under 139(1) of the Income Tax Act, 1961 and thus notice under Section 148A of the Income Tax Act, 1961 came to be issued after information was gathered .

49. Only in response to notice issued under Section 148 of theIncome Tax Act, 1961 on **06.04.2022,** a return of income was filed by the petitioner on **27.04.2022** pursuant to which the impugned assessment orders dated **03.01.2024** was passed by the 1st respondent under Section 147 and 144B of the Income Tax Act, 1961. Therefore, there is no merits in the challenge to the impugned assessment order dated 3.1.20 24 passed by the 1st respondent under Section 147 and 144B of the Income Tax Act, 1961.

50. The impugned assessment order dated 03.01.2024 passed by the 1st respondent under Section 147 and 144B of the Income Tax Act, 1961 also cannot be challenged as the procedure contemplated under 144B of theIncome Tax Act, 1961 has been followed.

51. Therefore, this writ petition is liable to be dismissed. However, liberty is given to the petitioner to challenge the impugned assessment order dated 03.01.2024 passed by the 1st respondent under section 246A of the Income Tax Act, 1961 before the Appellate Commissioner within a period of **30 days** from the date of receipt of this order.

52. In case such an appeal is filed within such time, the appellate Commissioner shall dispose the appeal on merits without further reference to limitation in filing such appeal and without getting influenced by any of the observation contained herein touching on merits of the case.

53. These Writ Petitions stand dismissed with the above liberty. No costs.

Consequently, connected Writ Miscellaneous Petitions are closed.

03.01.2025

Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No
Speaking Order / Non-Speaking Order
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To

1.The Assessment Unit,
Income Tax Department,
New Delhi.

2.The Income Tax Officer,
Ward 1(1),
Trichy,
Trichy Main Building, Williams Road,
Contonment,
Trichy – 620 015.

C.SARAVANAN, J.

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Pre-delivery order in
W.P.(MD)No.3584 of 2024
and
W.M.P.(MD)Nos.3537, 3538, 3539 of 2024

03.01.2025