IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	24.02.2026
Pronounced on	27.02.2026

CORAM

THE HONOURABLE MR. JUSTICE C.SARAVANAN

W.P.No.13360 of 2023
and
W.M.P.Nos.13055, 13058 of 2023 and W.M.P.No.44781 of 2025

Shanmugasundaram Alamelu ... Petitioner

Vs.

The Income Tax Officer,
Non-Corp., Ward 1(1) CHE,
Chennai Main Building,
No.121, Mahatma Gandhi Road,
Nungambakkam,
Chennai – 600 034. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records on the file of the Respondent in impugned Order passed under Section 148A(d) of the Income Tax Act, 1961 by the Respondent in DIN & Notice No.ITBA/AST/F/148A/2022-23/1051791040(1) dated 31.03.2023 for the Assessment Year 2016-17 and the consequential impugned Notice issued under Section 148 of the Income Tax Act, 1961 by the Respondent in DIN & Notice No.ITBA/AST/S/148_1/2022-23/1051791515(1) dated 31.03.2023, quash the same as violation of Principles of Natural Justice, without jurisdiction, void ab initio.

For Petitioner : Mr.B.Sivaraman

For Respondent : Mr.B.Ramana Kumar
Senior Standing Counsel

ORDER

The Petitioner is before this Court against the impugned order passed under Section 148A(d) of the Income Tax Act, 1961 and the impugned notice issued under Section 148 of the Income Tax Act, 1961, both dated 31.03.2023.

2. The impugned Order and Notice relates to the Assessment Year 2016-2017. As per the amended Section 149 of the Income Tax Act, 1961 which came into force with effect from 01.04.2021, the last date for issuance of Notice under Section 148 is 3 years or 10 years i.e., 31.03.2020 or 31.03.2027. Extended period of 10 years is available to an Assessing Officer where the income escaping assessment is likely to amount to fifty lakh rupees or more.

3. However, such a Notice under Section 148 of the Income Tax Act, 1961 can be issued under the new regime within 3 years or 10 years, as the case may be provided that the limitation prescribed under the old regime under Section 149 of the Income Tax Act, 1961, as in force on 31.03.2021, had not expired. The other requirement for invoking extended period is that Assessing Officer should be in possession books of account or other documents or evidence which reveal that the 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 entries in the books of account,

which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more. This is as per the first *Proviso* to Section 149 of the Income Tax Act, 1961 as in force with effect from 01.04.2021.

4. Section 149 of the Income Tax Act, 1961 as in force with effect from 01.04.2021 is reproduced below:-

"149. Time limit for notice.

(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 account or other documents or evidence which reveal that the 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 entries in the books of account,

which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more:]

***Provided that** no notice under section 148 shall be issued at any time in a case for the relevant assessment year beginning on or before 1st day of April, 2021, if [a notice under section 148 or section 153A or section 153C could not have been issued at that time on account of being beyond the time limit specified under the provisions of clause (b) of sub-section (1) of this section or section 153A or section 153C, as the case may be], as they stood immediately before the commencement of the Finance Act, 2021:*

***Provided further that** the provisions of this sub-section shall not apply in a case, where a notice under section 153A, or section 153C read with section 153A, is required to be issued in relation to a search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A, on or before the 31st day of March, 2021:*

***Provided also that** for the purposes of computing the period of limitation as per this section, the time or extended time allowed to the assessee, as per show-cause notice issued under clause (b) of section 148A or the period during which the proceeding under section 148A is stayed by an order or injunction of any court, shall be excluded:*

***Provided also that** where immediately after the exclusion of the period referred to in the immediately preceding proviso,* *the period of limitation available to the Assessing Officer for passing an order under clause (d) of section 148A is less than seven days, such remaining period shall be extended to seven days and the period of limitation under this sub-section shall be deemed to be extended accordingly.*

Explanation.—*For the purposes of clause (b) of this sub-section, "asset" shall include immovable property, being land or building or both, shares and securities, loans and advances, deposits in bank account.*

[(1A) Notwithstanding anything contained in sub-section (1), where the income chargeable to tax represented in the form of an asset or expenditure in relation to an event or occasion of the value referred to in clause (b) of sub-section (1), has escaped the assessment and the investment in such asset or expenditure in relation to such event or occasion has been made or incurred, in more than one previous years relevant to the assessment years within the period referred to in clause (b) of sub-section (1), a notice under section 148 shall be issued for every such assessment year for assessment, reassessment or recomputation, as the case may be.]

(2)The provisions of sub-section (1) as to the issue of notice shall be subject to the provisions of section 151.]

5. Since the income that has escaped assessment was more than one lakh (i.e., Rs.43,75,000/-), the Income Tax Department had time up to 6 years to issue a Section 148 Notice under the old regime i.e., till 31.03.2023.

6. In the present case, Section 148A(b) Notice of the Income Tax Act, 1961 was issued for the first time on 01.03.2023 for the Assessment

Year 2016-2017, income having escaped in the hands of the Petitioner to the tune of Rs.43,75,000/-.

7. Since a different period of limitation has been prescribed under the new regime as mentioned above, such Notice could be issued only within the period of limitation under the new regime. If the income that had escaped assessment was less than Rs.50,00,000/-, a Notice under Section 148 under the new regime could be issued latest by **31.03.2020**. However, if the income that had escaped assessment was more than Rs.50,00,000/-, such a Notice under the new regime could be issued by **31.03.2027**.

8. It is argued that since the income escaping assessment is less than Rs.50,00,000/- i.e., Rs.43,75,000/-, the impugned Section 148A(d) Order dated 31.03.2023 passed and the impugned Section 148 Notice dated 31.03.2023 issued are to be held without jurisdiction.

9. The other ground on which the impugned Order is under challenge is that the Petitioner had replied to the Section 148A(b) Notice on 29.03.2023 which was not considered while passing the impugned

Order dated 31.03.2023 under Section 148A(d) of the Income Tax Act, 1961.

10. On the other hand, it is the case of the Respondent that the value of the property has to be 1/4th of Rs.2,15,00,000/- being the guideline value as per Section 50C of the Income Tax Act, 1961.

11. The facts on record however reveal that the Petitioner W/o.V.R.Shanmugasundaram had been settled of an immovable property together with 1/3rd undivided share of the land in 1360 sq.ft., vide Settlement Deed dated 27.11.2009.

12. Later, the Petitioner along with her husband, son executed a Sale Deed on 07.10.2015 in favour of one S.Sankarapandian for a sum of Rs.1,75,00,000/-. However, the guideline value of the said property as per the aforesaid Sale Deed dated 07.10.2015 was Rs.2,15,00,000/-.

13. The Petitioner had failed to file the Return of Income after the sale was completed. It is in this background, Notice under Section 148A of the Income Tax Act, 1961 was issued wherein it was stated as under:-

"On perusal of the information available with this office, it is found that the following transaction you have payments to you:

"Sale of immovable property for Rs.2,15,00,000/- during the FY 2015-16.

Sale consideration received on sale of immovable property Rs.43,75,000/-."

In spite of the above transaction, it is noted that you have not filed the return of income for A.Y. 2016-17.

In view of the above, you are required to show-cause as to why a Notice u/s. 148 of the Income-tax Act, 1961 should not be issued on the basis of the above information which suggests that the income chargeable to tax has escaped assessment."

14. The argument of the Petitioner is that the amount was less than Rs.50,00,000/- and therefore the aforesaid Notice under Section 148A(b) of the Income Tax Act, 1961 could not have been issued as the limitation under the new regime had already expired on 31.03.2020 in terms of Section 149(1)(a) of the Income Tax Act, 1961.

15. The recital in the above Sale Deed indicates that the Petitioner's husband V.R.Shanmugasundaram had retained ground floor and third floor of the built-up area inclusive of common area together with 2/3rd undivided share in 1360 sq.ft., of the land and that the Petitioner was settled 1st floor or inclusive of common area in the premises together with 1/4th undivided share out of 1360 sq.ft., of land

and that the 3rd vendor namely S.Suresh, son of the Petitioner had acquired entire 2nd floor inclusive of the common area together with 1/4th of the undivided share in the land.

16. The following recital is relevant for the purpose of the above narration:-

> "Whereas in the aforesaid manner Mr.V.R.Shanmuga Sundaram, the 1st vendor herein, had acquired entire Ground and Third Floor built up area inclusive of common areas in the premises together with 2/4th undivided share in 1360 Square Feet of land, Mrs.S.Alamelu, the 2nd Vendor herein had acquired entire First Floor built up area inclusive of common areas in the premises together with 1/4th undivided share in 1360 Square Feet of land and Mr.S.Suresh, the 3rd Vendor herein, had acquired entire Second Floor built up area inclusive of common areas in the premises together with 1/4th undivided share in 1360 Square Feet of land, which is totally and morefully described in the Schedule hereunder."

17. This is in consonance with the recital in Schedule "B" to the above Sale Deed, which reads as under:-

> "One fourth undivided share of land in 1360 square feet, together with entire First Floor measuring 1360 square feet including common areas, situate at Old Door No.3, New Door No.5, Chockalingam Nagar, Vellala Teynampet, Chennai – 600 086, comprised in R.S.No.1395/9 (part)

> present R.S.No.1395/8, Block No.28 of Mylapore Division, Mylapore-Triplicane Taluk, Chennai District, situated within the Registration District of Chennai Central and Registration Sub District of Joint Sub Registrar-I, Chennai Central."

18. Under Section 50C of the Income Tax Act, 1961, where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed or assessable by any authority of a State Government (hereafter in this Section referred to as the "stamp valuation authority") for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall, for the purposes of Section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer.

19. Section 48 of the Income Tax Act, 1961, provides for computation of "capital gains".

20. Section 48 of the Income Tax Act, 1961 is reproduced below:

> ***48. Mode of computation. [Substituted by Act 18 of 1992, Section 24, for Section 48 (w.e.f. 1.4.1993).]***

-The income chargeable under the head "Capital gains" shall be computed, by deducting from the full value of the consideration received or accruing as a result of the transfer of the capital asset the following amounts, namely:-

(i) expenditure incurred wholly and exclusively in connection with such transfer;

(ii) the cost of acquisition of the asset and the cost of any improvement thereto:

(iii) in case of value of any money or capital asset received by a specified person from a specified entity referred to in subsection (4) of section 45, the amount chargeable to income-tax as income of such specified entity under that sub-section which is attributable to the capital asset being transferred by the specified entity, calculated in the prescribed manner:

Provided that in the case of an assessee, who is a non-resident, capital gains arising from the transfer of a capital asset being shares in, or debentures of, an Indian company shall be computed by converting the cost of acquisition, expenditure incurred wholly and exclusively in connection with such transfer and the full value of the consideration received or accruing as a result of the transfer of the capital asset into the same foreign currency as was initially utilised in the purchase of the shares or debentures, and the capital gains so computed in such foreign currency shall be reconverted into Indian currency, so, however, that the aforesaid manner of computation of capital gains shall be applicable in respect of capital gains accruing or arising from every reinvestment thereafter in, and sale of, shares in, or debentures of, an Indian company:

Provided further that where long-term capital gain arises from the transfer of a long-term capital asset, other than capital gain arising to a non-resident from the transfer of shares in, or debentures of, an Indian company referred to in the first proviso, the provisions of clause (ii) shall have effect as if for the words "cost of acquisition" and "cost of any improvement", the words "indexed cost of acquisition" and "indexed cost of any improvement" had respectively been substituted:

[Provided also that nothing contained in the first and second provisos shall apply to the capital gains arising from the transfer of a long-term capital asset being an equity share in a company or a unit of an equity oriented fund or a unit of a business trust referred to in section 112A:] [Inserted by Act 67 of 1984, Section 13 (w.e.f. 1.4.1985).]

[Provided also that nothing contained in the second proviso shall apply to the long-term capital gain arising from the transfer of a long-term capital asset being bond or debenture other than capital indexed bonds issued by the Government:] [Inserted by Act 26 of 1997, Section 18 (w.e.f. 1.4.1998).]

[Provided also that where shares, debentures or warrants referred to in the proviso to clause (iii) of section 47 are transferred under a gift or an irrevocable trust, the market value on the date of such transfer shall be deemed to be the full value of consideration received or accruing as a result of transfer for the purposes of this section:] [Inserted by Act 10 of 2000, Section 22 (w.e.f. 1.4.2001).]

[Provided also that no deduction shall be allowed in computing the income chargeable under the head "Capital

gains" in respect of any sum paid on account of securities transaction tax under Chapter VII of the Finance (No. 2) Act, 2004.] [Inserted by Act 23 of 2004, Section 12 (w.e.f. 1.4.2005).]

[Explanation. - For the purposes of this section,-

(i) "foreign currency" and "Indian currency" shall have the meanings respectively assigned to them in section 2 of the Foreign Exchange Regulation Act, 1973 (46 of 1973);

(ii) the conversion of Indian currency into foreign currency and the reconversion of foreign currency into Indian currency shall be at the rate of exchange prescribed in this behalf;

(iii) "indexed cost of acquisition" means an amount which bears to the cost of acquisition the same proportion as Cost Inflation Index for the year in which the asset is transferred bears to the Cost Inflation Index for the first year in which the asset was held by the assessee or for the year beginning on the 1st day of April, 1981, whichever is later;

(iv)"indexed cost of any improvement" means an amount which bears to the cost of improvement the same proportion as Cost Inflation Index for the year in which the asset is transferred bears to the Cost Inflation Index for the year in which the improvement to the asset took place;]

(v) ["Cost Inflation Index", in relation to a previous year, means such Index as the Central Government may, having regard to seventy-five per cent. of average rise in the

Consumer Price Index for urban non-manual employees for the immediately preceding previous year to such previous year, by notification in the Official Gazette, specify, in this behalf.] [Substituted by Act 10 of 2000, Section 22, for Clause (v) (w.r.e.f. 1.4.1993).]"

21. Thus, there is no doubt that the petitioner was required to pay tax on the capital gains arising from the sale of the asset under the sale deed executed on 07.10.2015.

22. A conjoint reading of Section 149, Section 50C and 48 reveals that the petitioner was required to pay tax on capital gains from the sale of the asset on the guideline value. For the purpose of computing income that has escaped assessment, the value adopted by the stamp valuation authority under Section 50C of the Income Tax Act, 1961 is to be considered as the expression used under Section 149 of the Income Tax Act, 1961 states as under:

(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 account or other documents or evidence which reveal that the 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 entries in the books of account,

which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more.

23. The value adopted for the purpose of stamp duty was Rs.2,15,00,000/-. Since the petitioner sold 1/4th of the property, the petitioner's 1/4th share of the sale consideration is Rs.53,75,000/-.

24. Since the amount that has escaped assessment has to be construed as Rs.53,75,000/-, invocation of machinery with the issuance of a notice under Section 148 of the Income Tax Act, 1961 cannot be found fault with. Therefore, there is no merit in the challenge to the impugned order dated 31.03.2023 passed under Section 148(A)(d) and the impugned Section 148 Notice dated 31.03.2023 of the Income Tax Act, 1961.

25. The argument that the petitioner's written submission was not considered is also of no relevance, as the principal issue for invoking the

extended period of limitation is answered against the petitioner. Therefore, this Writ Petition is liable to be dismissed.

26. The respondent is directed to complete the assessment pursuant to the impugned order and impugned notice, as expeditiously as possible.

27. It is needless to state that for the purpose of computing limitation under Section 153, the time during which the proceedings were pending before this Court shall stand excluded.

28. This Writ Petition stands dismissed with the above observations. Consequently, connected miscellaneous petitions are closed. No costs.

27.02.2026

Neutral Citation: Yes / No

av/raja/arb

To:

The Income Tax Officer,
Non-Corp., Ward 1(1) CHE,
Chennai Main Building,
No.121, Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034.

C.SARAVANAN, J.

av/raja/arb

Pre-delivery Order in
W.P.No.13360 of 2023

27.02.2026