

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 17.09.2019

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.No.19279 of 2019

and

W.M.P.No.18727 of 2019

M/s.S.M.Sarveswaran (HUF),
REP. by its Kartha,
S.M.Sarveswaran,
BD2, Orchid Eleganz Apartments,
Kannapiran Mills Road,
Sowripalayam, Coimbatore-28.

...Petitioner

Vs.

The Income Tax Officer,
Non Corporate Ward -1(2),
Office of the ITO,
Non Corporate Ward 1(2),
67-A, Race Course Rd, Race Course,
Gopalapuram, Coimbatore 641018.

... 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 of the respondent in PAN/NCW1(2)/CBE/18-19, quash the notice dated 29.03.2019.

For Petitioner : Mr.R.Asokan

For Respondents : Mr.A.P.Srinivas
Senior Standing Counsel

ORDER

Heard Mr.R.Asokan, learned counsel for the petitioner and Mr.A.P.Srinivas, learned Senior Standing Counsel for the respondent.

2.The case of the petitioner, in short, is as follows:

The petitioner's father by name V.Maruthachalam was not an assessee to his knowledge and did not file income tax return either for the financial year 2011-12 /Assessment year 2012-13 or for the earlier years. His father was an agriculturist and possessed only agricultural lands. He did not have any other income except the agricultural income. Therefore, there was no need to file any return of income under the Income Tax Act. He died on 02.08.2012, leaving behind the petitioner and his two sisters viz., Pushparagini and J.Nirmala, as his legal heirs. The petitioner's mother predeceased the petitioner's father. Whiles, after six years of the petitioner's father's demise, the respondent issued the impugned notice under Section 148 of the Income Tax Act in the name of the petitioner's deceased father represented by the legal heirs, out of whom, the first person was shown as M/s.S.M.Saraveswaran (HUF). The notice issued on the dead person is a nullity and void. A HUF

cannot be legal heir of a person. The present notice is barred by limitation, since the notice is issued after lapse of four years from the end of the said assessment year.

3. Counter affidavit is filed by the respondent, wherein it is stated as follows:

The writ petition is not maintainable challenging the notice issued under Section 148 of the Income Tax Act. The Hon'ble Supreme court in **GKN Drive Shafts' case** reported in **259 ITR 19 (SC)**, clarified the procedure to be followed, when notice is issued under Section 148. Therefore, the petitioner has to follow such procedure including by asking the reasons for reopening the assessment. Upon the request so made, the reasons can be furnished and the petitioner can file objections and the Officer thereafter has to pass a speaking order before proceeding with the assessment. In this case, the writ petitioner has not filed the return and on the other hand filed the present writ petition straightaway.

4. Apart from saying so in the above counter affidavit, the respondent has narrated certain other facts and circumstances, which warranted the issuance of notice under Section 148. Those contentions are on the factual

aspects of the matter involving the reopening proceedings, over which, this Court, at this stage, is not inclined to express any view, since this Court is fully convinced that the present writ petition as such filed against the notice under Section 148 of the Income Tax Act, cannot be maintained without following the procedures as clarified by the Apex Court in *GKN Drive Shafts's case*.

5. No doubt, it is contended by the learned counsel for the petitioner that the impugned notice issued in the name of the dead person cannot be maintained. In support of such contention, learned counsel sought to rely on a decision of this Court made in W.P.No.30060 of 2017 dated 07.06.2018.

6. A careful perusal of the present facts and circumstances of the case, more particularly, the impugned notice as well as the facts and circumstances of the above said case relied on by the learned counsel would undoubtedly indicate that they are distinguishable. It is seen that in the above case relied by the learned counsel, the notice under Section 148 was issued only in the name of the dead person. Therefore, this Court finds that such notice is not sustainable. However, perusal of the impugned notice in this case would show that it was not simply issued in the name of the dead person alone and on the other hand, it proceeds to indicate that the same was issued in the name of

V.Maruthachalam, represented by legal heirs and by showing three persons, including the petitioner, as the legal heirs. Therefore, the notice issued under Section 148 in this case cannot be construed as if it was issued only in the name of the dead person.

7. As rightly pointed out by the learned Senior Standing counsel appearing for the respondent, the petitioner can file return and seek for reasons for reopening and in that event it is the duty of the respondent to give reasons so as to enable the petitioner to file his objection to the reopening proceedings. Needless to say that once such objections are filed, a speaking order is to be passed by the respondent as observed in *GKN Drive Shaft's case*. When such course of action is yet to take place, I do not think that the petitioner is entitled to maintain the writ petition by challenging the notice issued under Section 148 at the very initial stage.

8. Accordingly, this writ petition is disposed of, by granting liberty to the petitioner to follow the procedures laid down after issuance of Section 148 notice as explained/clarified in *GKN Drive Shaft's case*. Accordingly, the petitioner shall file the return, as required in the impugned notice within a

K.RAVICHANDRABAABU,J.

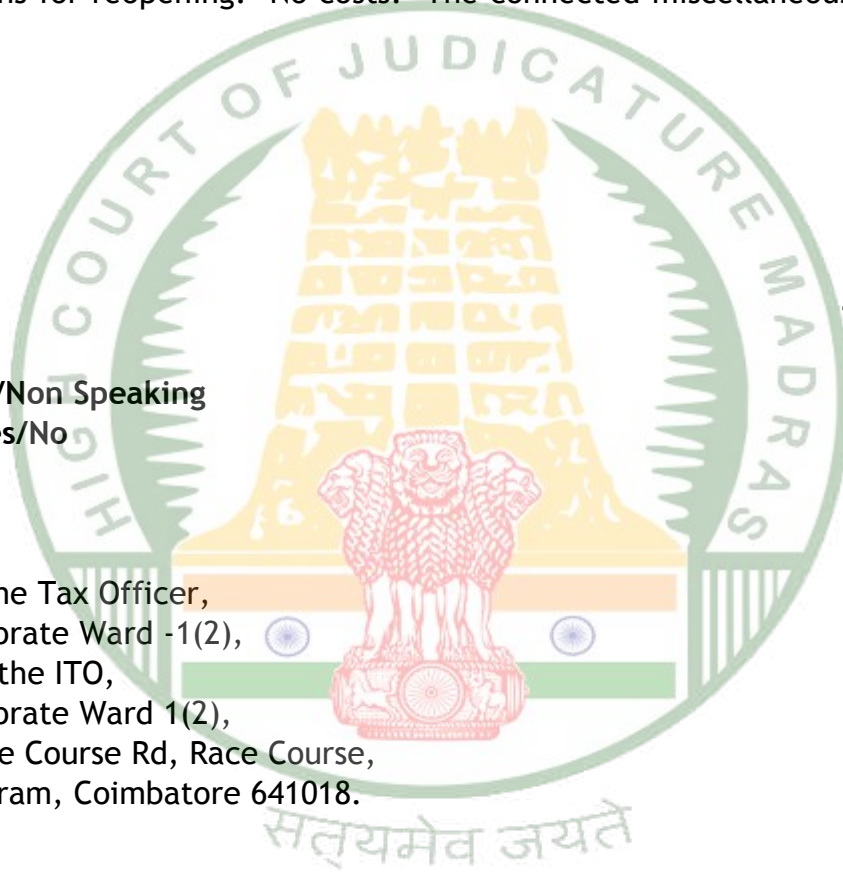
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period of 15 days from the date of receipt of a copy of this order and ask for the reasons for reopening. No costs. The connected miscellaneous petition is closed.

17.09.2019

Speaking/Non Speaking
Index :Yes/No
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To
The Income Tax Officer,
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