



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **06.11.2023**

CORAM:

THE HON'BLE MR. JUSTICE KRISHNAN RAMASAMY

W.P. No.6921 of 2022
and WMP Nos.6961 & 6963 of 2022

Mr.S.Uttam Chand

...

Petitioner

VS.

1. Assistant Commissioner of Income Tax
(Non-Corporate Circle – 7(1))
Wanaparthi Block - 6th Floor,
121, Nungambakkam High Road
Chennai – 600 034.

2. Income Tax Officer
National Faceless Assessment Centre
New Delhi.

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Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the respondent herein pertaining to reopening notice bearing Notice No.ITBA/AST/S/148/2020-21/1031938536(1) dated 30.03.2021, issued by the 1st respondent herein, as well as the consequential order bearing DIN ITBA/AST/F/17/2021-22/1040500420(1) dated 09.03.2022 issued by the 2nd respondent rejecting the petitioner's objections for reopening and quash the same.



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For Petitioner : Mr.Srinath Sridevan
Senior Counsel for
Jyotsna Sivakumar

For Respondents : Mr.B.Ramana Kumar
Standing Counsel

ORDER

This writ petition is filed challenging the reopening notice bearing Notice No.ITBA/AST/S/148/2020-21/1031938536(1) dated 30.03.2021, issued by the 1st respondent herein, as well as the consequential order bearing DIN ITBA/AST/F/17/2021-22/1040500420(1) dated 09.03.2022 issued by the 2nd respondent rejecting the petitioner's objections for reopening.

2. The case of the petitioner was that the present notice issued under Section 147 of the Income Tax Act was beyond the period of four years stipulated in the Act since the impugned notice was issued on 30.03.2021 whereas the issue pertains to the Assessment Year 2013-2014. In terms of proviso to Section 147, the limitation period is four years. Within four years, the respondents are supposed to re-open the assessment otherwise, in terms of the first proviso to Section 147, the respondent is supposed to empower to re-open, in the event if there is



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any failure on the part of the assessee to disclose the income. When an assessment under sub-section (3) of Section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of the four years period from end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under Section 139 or in response to a notice issued under sub section (1) or Section 142 or Section 148 or to disclose fully and truly all material facts necessary for the assessment, for that assessment year.

3. The learned counsel for the petitioner would submit that in terms of Section 149 of the Act, time limit has been prescribed for the purpose of issuing notice for the purpose of re-opening the assessment under Section 147. He would further submit that the petitioner has disclosed the income in his return of income filed for the Assessment Year 2013 – 2014 on 25.09.2013 wherein at Page 23, in Schedule EI, he has disclosed the details of exempted income. In the said income, for the exempted income in the capital gain arising out of sale of Kyanallur agricultural land has been shown as Rs.9,96,57,892/-. Subsequent to the



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WEB COPY filing of the return, the Assessing Officer has sent a questionnaire dated 24.06.2015 whereby he was called for certain particulars with regard to the agricultural income, land holdings, etc. with chitta, adangal and patta. The petitioner has furnished the details to the Assessing Officer on 30.01.2016 and 04.02.2016 by furnishing copy of the ledger accounts of Kyanallur property purchase, copy of the sale deed of kyanallur property and copy of the sale deed of Kyanallur property. Therefore, he would submit that nothing has been concealed on the part of the petitioner in as much as possible he has furnished all the details called for by the Assessing Officer. Only in the event of failure on the part of the assessee to disclose the particulars of income, the assessment can be re-opened in terms of Section 147 of the Act. Therefore, no other circumstances warrants for reopening the assessment as well as the consequential order rejecting the petitioner's objections for reopening.

4. On the other hand, the learned Standing Counsel appearing for the respondents vehemently argued stating that it is only for clarity purpose this re-assessment notice has been issued and no prejudice would be caused in providing the information by the petitioner. The petitioner was asked to clarify that whether it is really an agricultural



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land and the income earned is through the sale of said agricultural land, which is around nine crores. Therefore, for the interest of the revenue, the respondents have ordered for re-opening assessment. The Assessment Order was passed on 05.02.2015 whereas the particulars with regard to the details of land were provided only on 30.01.2016. Therefore, he would contend that there is ample chances for manipulating the records and hence the reply given by the petitioner would not have been considered at the time of passing the assessment order. Therefore, he urged that for the best reasons only, the notice for re-assessment has been rightly issued by the respondent.

5. By referring to the explanation (1) to Section 147 of Income Tax Act, the learned Standing Counsel would submit that merely producing the books of accounts or other evidence from which material evidence could with due diligence have been discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of the foregoing proviso. Therefore, even assuming that the petitioner has produced some documents, it will not amount to proper disclosure within the meaning, in terms of explanation to Section 147 of the Act and hence they are empowered to re-open the assessment.



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6. Heard the learned counsel appearing for the petitioner as well as the learned Standing Counsel appearing for the respondents and perused the materials available on record.

7. Upon perusing the records and hearing the submissions of the learned counsels, it appears that the four year limitation for re-opening the assessment in terms of Section 147 for the Assessment Year 2013-2014 admittedly expired on 30.03.2019. In terms of first proviso to Section 147, if the respondent intends to re-open the assessment, only in the circumstances by the reason of the failure on the part of the assessee to make a return under Section 139 or in response to a notice issued under sub-section (1) of Section 142 or Section 148 or to disclose fully and truly all material facts necessary for the purpose of re-assessment.

8. At this juncture, it would be appropriate to extract the explanation to Section 147 of the Income Tax Act which reads as follows-

Explanation to Section 147 of the Income Tax Act

147. Income escaping assessment.—*If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions*



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of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year):

Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year:

Provided further that nothing contained in the first proviso shall apply in a case where any income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment for any assessment year:]

Provided also] that the Assessing Officer may assess or reassess such income, other than the income involving matters which are the subject matters of any appeal, reference or revision, which is chargeable to tax and has escaped assessment

Explanation 1.—Production before the Assessing Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of the foregoing proviso.

Explanation 2.—For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely:—

(a) where no return of income has been furnished by the assessee although his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax;

(b) where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing



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Officer that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return;

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[(ba) where the assessee has failed to furnish a report in respect of any international transaction which he was so required under section 92E;

(c) where an assessment has been made, but—

- (i) income chargeable to tax has been under assessed; or
- (ii) such income has been assessed at too low a rate; or
- (iii) such income has been made the subject of excessive relief under this Act ; or
- (iv) excessive loss or depreciation allowance or any other allowance under this Act has been computed;]

(ca) where a return of income has not been furnished by the assessee or a return of income has been furnished by him and on the basis of information or document received from the prescribed income-tax authority, under sub-section (2) of section 133C, it is noticed by the Assessing Officer that the income of the assessee exceeds the maximum amount not chargeable to tax, or as the case may be, the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return;

[(d) where a person is found to have any asset (including financial interest in any entity) located outside India.

Explanation 3.—For the purpose of assessment or reassessment under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, notwithstanding that the reasons for such issue have not been included in the reasons recorded under sub-section (2) of section 148.

Explanation 4.—For the removal of doubts, it is hereby clarified that the provisions of this section, as amended by the Finance Act, 2012 (23 of 2012), shall also be applicable for any assessment year beginning on or before the 1st day of April, 2012.



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9. A perusal of the above provision would reveal that the re-opening/re-assessment can be made under Section 147 of the Act in the event if there is failure on the part of the assessee to make a return under Section 139 or in response to a notice issued under sub-section (1) of Section 142 or Section 148 or to disclose fully and truly all the material facts necessary for re-opening assessment for that assessment year.

10. In the present case, the notice issued under Section 147 of the Income Tax Act was beyond the period of four years, as stipulated in the Act since the notice was issued on 30.03.2021. The issue pertains to the Assessment Year 2013-2014 and no notice was issued to the petitioner under Section 142 (1) or Section 148 who has filed returns. The only submission of the learned Standing Counsel for the respondent was that the petitioner has not disclosed full particulars which are necessary for the assessment, at the time of filing returns. Thus the present proceedings. For a perusal of this Court, the returns of income for the Assessment Year 2013-2014 was also filed wherein, it is seen that in the said returns, particularly in Schedule EI, the details of the exempted income were provided under the category "Others" and the exempted



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income categorically has been shown as Rs.9,96,57,897/- . Therefore,

there is no doubt that assessee has disclosed the income earned out of the sale of the agricultural land. At this juncture, the learned Standing Counsel for the respondent raised an issue with regard to the income shown in the category “others”. But the assessee has not mentioned anything that was bought out of the sale of agricultural land.

11. In reply, the learned counsel for the petitioner would submit that during the course of assessment, the Assessing Officer called for various informations by virtue of notice dated 24.06.2015 and the assessee has filed reply dated 04.02.2016 and also dated 30.01.2016. In the reply dated 30.01.2016, the petitioner has provided the ledger details of Kyanallur property and also produced a copy of the sale deed of Kyanallur property. These particulars were provided only upon subsequent request made by the Assessing Officer. The production of sale deed cannot be construed as production of books of accounts or other evidences. For the specific request of the respondent, the sale deed was produced. Hence, it cannot be construed as that it would fall under the explanation (1) of Section 147 of the Act. Sale deed is not a “Books of accounts”. Upon perusal of the exempted income, since the details



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furnished in the category with regard to sale of agricultural property were not fully disclosed, these details were called for. Therefore, the respondent's contention that in terms of explanation (1) to Section 147 that merely producing the Sale deed would not amount to providing the entire material facts fully and truly cannot be accepted. Further, he would submit that the explanation also provides “other evidences”. It is not that without specific request, these evidences were furnished. In order to justify whether the sale of property comes under capital gain income or not, the specific request was made calling upon the petitioner to file the sale deeds.

12. The petitioner had disclosed the information with regard to the sale of the agricultural land and all the particulars with regard to sale of agricultural land was disclosed before the Assessing officer in full extent. Further, a perusal of the materials placed before this Court would suffice to arrive at a conclusion that there is no failure on the part of the petitioner with regard to providing material facts and the notice issued under Section 148 and 149 of the Act for re-opening assessment for the Assessment Year 2013-14 is not sustainable and the same is liable to be set aside. Accordingly, the reopening notice bearing Notice



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13. In the result, this Writ Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

06.11.2023

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

1. Assistant Commissioner of Income Tax
(Non-Corporate Circle – 7(1))
Wanaparthi Block - 6th Floor,
121, Nungambakkam High Road
Chennai – 600 034.

2. Income Tax Officer
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KRISHNAN RAMASAMY, J.

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