IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2017

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.29614 of 2017 &
W.M.P.Nos.31898 & 31899 of 2017

Kovalam Santhana Krishnan Mohan ...Petitioner

.Vs.

Income Tax Officer, Ward-1,
Income Tax Office, Ootacamund ...Respondent

Prayer: The writ petition filed under Article 226 of the Constitution of India to issue a writ of Certiorari Mandamus, calling for the records of the respondent comprised in its notice issued under Section 148 of the Income Tax Act, 1961, for PAN:AMNPM3778N, dated 30.03.2017 and all proceedings in furtherance thereof, including but not limited to the order dated 25.09.2017 passed by the respondent, and to quash the same as arbitrary, unjust and illegal, and to consequently forbear the respondent from in any manner reassessing the petitioner's income under Section 147 of the Income Tax Act,1961 for the Assessment Year 2010-11 and pass orders.

For Petitioner : Mr.Suhrith Parthasarathy
For Respondent : Mr. Sundareshwaran, SSC

O R D E R

Heard Mr.Suhrith Parthasarathy learned counsel for the petitioner and Mr. Sundareshwaran, learned Senior Senior Counsel accepting notice on behalf of the respondent. By consent, the writ petition itself is taken up for final disposal.

2.The petitioner is aggrieved by the impugned order passed by the respondent rejecting the petitioner's objections to a notice dated 30.03.2017 issued under Section 148 of the Income Tax Act, 1961 for re-opening the assessment for the year 2010-2011. The petitioner by representation dated 03.08.2017 sought for the reasons for re-opening, which were furnished by the respondent vide reply dated 08.08.2017. The allegation was that as per the records, the petitioner had not filed his return of income for the Assessment Year 2010-2011 and on verifying the ITS details available in the AST, it is found that the petitioner sold immovable properties to the tune of Rs.4,81,92,575/- during the financial year 2009-2010 (relavant to the assessment year 2010-2011). Apart from that, there was also an allegation that the petitioner received professional/technical services fees rendered for a company. Therefore, the respondent stated that since the petitioner has not filed return of income admitting any income from capital gains or profession, he has reason to hold that the income chargeable to tax has escaped assessment as per Section 147 of the Income Tax Act.

3.The petitioner submitted a reply on 18.08.2017 stating that as the transactions were effected during the assessment year 2009-2010, the petitioner filed his return of income, the returns was accepted and the tax has been paid. Since, there was no income for the assessment year 2010-2011, the petitioner did not file his return.

4. On receipt of the objections the respondent, who appears to have been a very reasonable officer, sent the notice dated 11.09.2017 to the petitioner, by which, the petitioner was directed to produce a copy of the profit and loss account, balance sheet and auditor's report Under Section 44 AB of the Act for the assessment year 2009-2010 with copies of the sale deeds as mentioned in the earlier order dated 18.08.2017, on or before 27.9.2017, to verify the petitioner's contention.

5.Thus it is seen that the respondent not only granted an opportunity to the petitioner to produce the books of accounts, but also fixed a preemptory date before, which he should do. Thus, a man of ordinary prudence would be of the opinion that the Assessing Officer would definitely wait till 27.09.2017, as he had already fixed a date for production of records. Unfortunately, the respondent appears to have been in a hurry and has passed the impugned order dated 25.09.2017.

6. On the perusal of the impugned order, it is seen that the respondent has scanned the explanations given by the petitioner for the notice for the re-opening and incorporated the same in the impugned order and the reason for rejection of the objections appears to be only one, which is to the effect that one of the nine transactions was dated 01.04.2009 relating to the assessment year 2010-2011.

7. Immediately thereafter, the petitioner had given a letter dated 27.09.2017 stating that the entire transactions pointed out in the reasons for re-opening have already been considered for the assessment year 2009-2010, as the income has accrued in the earlier assessment year and therefore, there is no escaped income in the assessment year 2010-11. The petitioner enclosed copies of the sale deed and stated that the possession has been handed over in February 2009 itself.

8. Therefore, it is contended that the respondent could not have passed the impugned order on 25.9.2017, as he fixed the date for production of documents on 27.9.2017.

9. The above facts clearly show that there has been violation of the principles of natural justice. The petitioner having been afforded an opportunity to produce the records on or before 27.9.2017, the respondent should have waited till 27.9.2017.

10. The explanation offered by the learned senior standing counsel that the officer himself has secured the documents from the concerned Sub-Registrar and therefore, proceeded to pass the impugned order, is not a convincing reply, as the officer by intimation dated 11.09.2017, not only called for the copies of documents, but also the copies of the profit and loss account, the balance sheet and auditor's report Under Section 44 AB of the Act for the assessment year 2009-2010. Thus this Court is convinced that the impugned order has been passed in violation of the principles of natural justice. These are sufficient reasons to hold that the impugned order cannot stand to the test of law.

11. In the result, the writ petition is allowed, the impugned order is set aside and the matter is remitted back to the respondent for a fresh consideration. The respondent shall afford an opportunity of personal hearing, peruse the documents filed by the petitioner along with their representation dated 27.9.2017, examine the Profit and loss account, Balance Sheet and Auditor's report under Section 44 AB of the Act for the assessment year 2009-2010 and pass a reasoned order on merits and in accordance with law. No cots. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

smn

To,

Income Tax Officer, Ward-1,
Income Tax Officer, Ootacamund

+ 1 cc to MR. Suhristh Parthasarathy, Advocate SR.82069
+ 1 cc to Mr. A.P. Srinivas, Sr. Standing Counsel SR.82638

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EU(05/12/2017)