

THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 26.09.2018

Delivered on 04.10.2018

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.No.20625 of 2016  
and  
W.M.P.No.17707 of 2016

A.Sridevi

.. Petitioner

vs.

The Income Tax Officer,  
Non-Corporate Ward 16(1),  
Chennai - 600 034.

..Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the respondent and quash the order in PAN/AAIPA9610J/NCW16(1)/16-17 dated 26.05.2016 and direct the respondent to drop the reassessment proceedings for the assessment year 2009-10.

For Petitioner : Mr.R.Venkatanarayanan  
for M/s. Subbaraya Aiyar Padmanaban

For Respondent : Mrs.Hema Muralikirshnan,  
Senior Standing Counsel for Income Tax

**ORDER**

The petitioner is aggrieved against the order of the respondent dated 26.05.2016, in rejecting the objections raised by the petitioner against reopening of the assessment.

2. The case of the petitioner is as follows:

The petitioner is an assessee under the respondent. For the assessment year 2008-09, the return of income was filed on 30.07.2009 declaring the total income of Rs.14,58,174/-. The return was processed under Section 143(1) of the Income Tax Act. The case was reopened by issuing a notice dated 21.02.2011 under Section 148. The respondent was informed that the return already filed on 30.07.2009 has to be treated as the one filed in response to the notice under Section 148 of the said Act. During the course of hearing, the petitioner was asked the details of sources and nature of cash deposits. The petitioner was asked to file the copies of bank accounts and other evidences. The authorised representative of the petitioner filed copies of Bank statement. The Assessing Officer, on scrutiny of bank accounts, completed the reassessment under section 143(3) read with section 147 on 30.12.2011 by adding the short fall in cash withdrawal of Rs.10,50,000/- as unexplained income. The respondent once again reopened the assessment by issuing notice under section 148 on 25.03.2016. The petitioner filed a reply dated 11.04.2016

to treat the return already filed on 30.07.2009 as the one filed in response to the notice and also requested to furnish the reasons for reopening the assessment. The respondent, vide letter dated 27.04.2016 furnished the reasons by stating that during the financial year 2008-09, one S.Nagarajan has received a sum of Rs.2.75 crores from the deceased L.S.Abinesh, husband of the petitioner, for purchase of property through his bank account and that sources for such advance made require to be verified. The petitioner, through letter dated 06.05.2016, filed their objections to reopen the assessment by stating that during the course of the first reassessment proceedings, copies of bank statements, receipts and payments account were produced including the sources of all deposits made and that the assessment was completed after due verification of all receipts and payments and the sources and therefore, the proposal to reopen to re-verify the source of advance given to S.Nagaraj amounts to change of opinion. It was also informed that there was no material available to conclude that the income has escaped assessment for issuing notice under section 148. The petitioner had also informed the respondent that there had been full and true disclosure of all material facts. However, the respondent through the impugned proceedings rejected the objection. The very reopening of the assessment for the second time beyond four years is barred by limitation.

3. A counter affidavit is filed by the respondent wherein it is stated as follows:

The writ petition is not maintainable since the petitioner is having effective and alternative remedy once the assessment order is passed under the Act. The reopening of the assessment was not barred by limitation. The assessee has not disclosed the advance made to the said S.Nagarajan for a sum of Rs.2.75 crores towards the purchase of property at Adyar, Chennai. Thus, there was failure on the part of the Assessee in not disclosing fully and truly, all material facts. Based on the tangible information available with valid reason existed, the conclusion was arrived that income had escaped assessment. As the assessee has not fully and truly disclosed the material facts, the issuance of notice beyond four years is not barred by limitation. The contention of the assessee that the assessment has been reopened on the basis of the existing material and that no new information has come to the knowledge of the Assessing Officer is an incorrect statement. The issue during the first reassessment proceedings pertains to the examination of the sources of the cash deposit made by the assessee in its bank account maintained at Axis Bank amounting to Rs.93 lakhs only. It is evident from the return of income filed as well as from the assessment order passed that the issue of advance given to Nagarajan, which was never disclosed, was not examined in the order passed by the Assessing Officer. The Assessee is relying on the fact

that she had inter alia produced the Bank statement of Tamilnadu Mercantile Bank also before the Assessing Officer wherein the name of Nagarajan figures and therefore, the same tantamount to specific information available in respect of the property purchased dealing with S.Nagarajan. This clarified that the evidence submitted by her including the bank statement can be treated as sufficient and relevant only insofar as the issue of verification of sources for cash deposits and there has been no mention by the Assessee regarding the particulars of purchase of property transaction with S Nagarajan as well as its source as there was no queries regarding the issue in the original reassessment proceedings. Mere production of bank statement etc., does not amount to disclosure made by the assessee on the said issue and the said information was specifically received by the Assessing Officer only after completion of the first re-assessment and the said information was never disclosed by the assessee prior to it. Therefore, it cannot be stated that the reopening of assessment now initiated was on the basis of existing material or amount to change of opinion.

4. The petitioner filed a reply to the counter affidavit wherein it is stated as follows:

The return of income tax filed in Form No.1 and 2 does not contain in production for disclosure of advances given and it contains only the income tax

returned. However, during the first re-assessment proceedings, the petitioner has furnished the entire bank account along with details of all receipts and payments wherein the advance made to Nagarajan amounting to Rs.2.75 crores is also mentioned. Therefore, there is no failure on the part of the assessee to disclose the advance made to Nagarajan during the re-assessment proceedings.

5. Heard learned counsel for the petitioner and the learned counsel appearing for the respondents.

6. The petitioner is aggrieved against the reopening of the assessment. The challenge made in this writ petition is against the proceedings of the respondent in rejecting the objection to reopen the assessment. The first objection raised by the petitioner against such reopening is on the ground of limitation. According to the petitioner, when the Assessing Officer completed the re-assessment under Section 143(3) read with 147 on 30.12.2011, issuing of notice once again under section 148 on 25.03.2016 is barred by limitation. On the other hand, it is the case of the Revenue that the subject matter escapement of income namely, an advance of Rs.2.75 crores made to one S.Nagarajan for purchase of land was not shown in the original return filed for the assessment year 2009-10 and therefore, as per proviso to Section 147, notice issued to reopen even after the expiry of four years, but within six

years, is legal and sustainable. It is the further contention of the Revenue that disclosure of certain details during the earlier reassessment proceedings with regard to the present subject matter transaction cannot be treated as full and true disclosure of the material facts while the assessee made the original return.

7. Let me now consider as to whether the reopening of the assessment is within the scope of Section 147. It is seen that the assessee, in respect of the assessment year 2009-10, filed the return of income on 30.07.2009 declaring the total income of Rs.14,58,174/-. The return of income was processed under Section 143(1). Therefore, it is evident that assessment of the original return was already made under Section 143(1) based on the materials filed/disclosed in the said return. Subsequently, the Assessing Officer reopened the assessment by issuing notice under section 148 dated 21.02.2011 by stating that he had reason to believe that the income has escaped assessment. It is seen that the issue involved in the above reassessment proceedings was in respect of the cash deposits made by the assessee during the previous year in savings bank account maintained with Axis Bank, Annanagar Branch, Chennai, to the tune of Rs.93 lakhs and that the Assessing Officer wanted to verify the details of sources and nature of such cash deposits. Therefore, it is evident that the present issue, namely, the advance made to the said S.Nagarajan to

the tune of Rs.2.75 crores for purchase of property was not the issue during the earlier reassessment proceedings. Accordingly, in pursuant to the earlier reopening of the assessment under section 147, an order of assessment was passed on 30.12.2011 under section 143(3) read with section 147 of the Income Tax Act, 1961. Only during the course of such re-assessment proceedings, the assessee has filed the statement of receipts and payments, wherein payment made to S.Nagarajan as advance to the tune of Rs.2 75 crores has also been referred to. The above said material filed before the Assessing Officer, during the earlier re-assessment proceedings also containing the disclosure of advance made to S.Nagarajan as stated supra, is sought to be relied on by the petitioner to contend that there was full and true disclosure of all material facts before the Assessing Officer and therefore, invoking the first proviso under section 147 to reopen the assessment beyond the period of limitation, cannot be sustained. On the other hand, the said material is sought to be relied on by the revenue as a tangible material for reopening the assessment once again.

8. It is not in dispute that the original assessment can be reopened at any number of times within the period of limitation prescribed under section 147 read with section 149. In this case, admittedly, the impugned reopening of the assessment was initiated after the period of four years. In order to justify

such reopening after such limitation period, the Revenue has to satisfy that any one of the ingredients as stipulated under the first proviso to section 147 is satisfied. Section 147 reads as follows:

*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 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 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.*

*Provided that where an assessment under sub-section (3) of section 143 or the 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:*

...  
 ...

9. As per the above said provision of law, if the Revenue wants to invoke the extended period of limitation, by taking shelter under the first proviso, it has to satisfy that escapement of income was by the reason either by failure on the part of the assessee to make the return under section 139 or in response to notice issued under sub section 142(1) or section 148 or by his failure to disclose fully and truly all material facts necessary for that assessment year. In this case, it is the claim of the Revenue that the assessee has failed to disclose fully and truly all material facts necessary for the assessment. Admittedly, the advance made to S.Nagarajan to the tune of Rs.2.75 crores was not disclosed in the original return filed by the Assessee as early as on 30.07.2009. It is true

that the assessment was reopened subsequently, by issuing notice under section 148 dated 21.02.2011 but for different purpose, namely, for verifying the details of sources and nature of cash deposits made by the assessee in the savings bank account maintained to the tune of Rs.93 lakhs. Admittedly, the assessee has participated in the re-assessment proceedings and filed their reply requesting the Assessing Officer only to treat the return already filed on 30.07.2009 as the one filed in response to the notice under section 148. It is further seen that during the course of hearing of re-assessment proceedings, the assessee's representative filed details of receipts and payments in respect of previous year. It is not in dispute that such details of receipt and payments furnished by the assessee before the Assessing officer, during the earlier re-assessment proceedings, also contained the advance made to the said S.Nagarajan to the tune of Rs.2.75 lakhs. It is true that this particular detail regarding advance made to the said person is considered as a tangible material to reopen the assessment. No doubt, this material could give rise to a cause of action for the reopening of the assessment once again, but it should be borne in mind that any number of reopening could be done only within the time prescribed under section 148 read with section 149. If the Assessing Officer is having reason to believe that the income has escaped the assessment, based on such tangible material, he can reopen the assessment within four years. If such reopening is sought to be done after four years, then the requirement of

satisfying either of the two conditions as stated in the first proviso to section 147 would arise. In this case, the Revenue contends that the assessee has failed to disclose fully and truly all material facts necessary for its assessment. In support of such contention, they seek to refer to the original return.

10. Admittedly, the original return filed by the assessee did not reflect the subject matter income, namely, the advance made by the assessee to the said Nagarajan of a sum of Rs.2.75 crores. When the earlier reopening proceedings was initiated with issuance of notice under section 148, the assessee did not file a fresh return by disclosing the subject matter income and on the other hand, she made a request to treat the return already filed for the assessment year 2009-10, as the one filed in response to the said notice. Therefore, it is evident that the original return filed by the assessee, which is sought to be treated as that of the return filed in response to the notice under section 148, is in fact and did not disclose truly and fully the material facts, more particularly, in respect of the subject matter transaction. Therefore, in my considered view the said transaction which came to the notice of the Assessing Officer, while reopening the assessment earlier, is certainly, a tangible material, based on which, the present reopening under section 147, can be resorted to. Admittedly, this material was not existing at the time of original assessment. No doubt, it is sought to be contended that the said

material was placed before the Assessing Officer during the earlier reassessment proceedings and however, he has not taken note of the same. I have already pointed out that the earlier reopening of the assessment was based on some other issue and therefore, the assessee is not justified in contending that no new material is available before the Assessing Officer for the present reopening. On the other hand, it is evident that the subject matter material was placed only by default, as the first time before the Assessing Officer, during the hearing of earlier reassessment proceedings in respect of a different issue and therefore, such material is undoubtedly, a new material for the Assessing Officer to resort to reopening of the assessment once again. At this juncture, it is to be noted that the assessee did not file a fresh return in response to Section 148 notice and only relied on the original return. Providing certain materials during the earlier reopening proceedings, cannot be equated with the disclosure of true and full material facts necessary for the assessment, unless such material was already placed on record at the time of filing the original return itself. Therefore, whatever the materials filed during the reassessment proceedings relating to a particular issue, cannot be considered as the true and full disclosure, unless such material is having any connection with the issue for which such reopening was done. On the other hand, such material, not relating to the issue for the earlier reopening proceedings, will only take the shape of a new and tangible material before

the Assessing Officer to reopen the assessment once again.

11. Now let me consider as to whether the reopening of assessment is barred by limitation as contended by the petitioner. It is seen that the assessee filed the original return on 30.07.2009 and the same was processed under section 143(1). Thereafter, the earlier reopening notice under section 148 was issued on 21.02.2011, admittedly within time. Consequently, the re-assessment order under section 143(3) read with section 147 was passed on 30.12.2011. Perusal of the said order would show that the Assessing Officer has re-assessed the income and finally arrived at the quantum of tax payable, surcharge and interest. Therefore it is evident that the original order of assessment made under Section 143 (1) have been re-assessed on 30.12.2011, and thus, the same is to be construed as having merged with the above re-assessment order dated 30.12.2011. However, if the second reopening is sought to be done, after the above said re-assessment, still, the same has to be done within the limitation prescribed under the first proviso to Section 147 read with Section 149. The relevant assessment year is 2009-10. The end of such assessment year fell on 31.03.2010. Admittedly, the escapement of assessment alleged in this case exceeds One lakh rupees. In view of the time limit prescribed under section 149(1)(b), such reopening can be done within the period of six years from the end of the assessment year 2009-10. Section 149(1)

reads as follows:

***Time limit for notice.***

*(1) No notice under section 148 shall be issued for the relevant assessment year,-*

*(a) if four years have lapsed form the end of the relevant assessment year, unless the case falls under clause (b) or clause (c);*

*(b) if four years, but not more than six years, have elapsed from the end of the relevant assessment year unless the income cha geable to tax which has escaped assessment amounts to or is likely to amount to one lakh rupees or more for that year.*

.....

12. Taking note of the fact that end of the assessment year 2009-10 fell on 31.03.2010, the impugned notice under section 148 having been issued on 15.03.2016, I am of the view that the same is well within the period of six years and therefore, I find that the impugned reopening of the assessment is not barred by limitation as contended by the petitioner.

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13. Learned counsel for the petitioner further contended that notice issued under section 148 dated 15.03.2016 did not allege that the assessee has not disclosed fully and truly all the materials necessary for the assessment and

therefore, the issuance of mere notice without such material averment is bad. I do not think that the learned counsel for the petitioner is justified in making such contention, more particularly, when the proceedings issued with reasons for reopening the assessment is in clear and categorical terms stated that the assessee has not disclosed fully and truly all the material details necessary for the assessment.

14. Learned counsel for the petitioner relied on the decisions reported in *(2000)241 ITR 0672 (Fenner (India Ltd. vs. Deputy Commissioner of Income Tax)*, *(2008) 296 ITR 0573 (Commissioner of Income Tax vs. Elgi Ultra Industries Ltd.,)* and *2009 317 ITR 0066 (Thiagarajar Mills (P) Ltd. vs. Deputy Commissioner of Income Tax)* to contend that mere escapement of income is not sufficient to justify the initiation of action after expiry of four years and such escapement must be by reason of failure on the part of the assessee to disclose truly and fully the material facts necessary for the assessment. I have already discussed supra and found that there was failure on the part of the assessee in not disclosing truly and fully the material facts with regard to the subject matter transaction in the original return. Therefore, the above decisions will not help the petitioner as the same are factually distinguishable.

15. (2010) 320 ITR 0561 (Commissioner of Income Tax vs. Kelvinator of India Ltd.) is relied on to contend that change of opinion cannot be a reason for reopening the assessment. Here again, the above decision, which is factually distinguishable, will not help the petitioner since the question of change of opinion does not arise in this case as admittedly, the subject matter income was never shown in the original return and therefore, it cannot be said that the Assessing Officer has taken a different opinion now on the said income.

16. Considering the above stated facts and circumstances, this Court is of the view that the petitioner has not made out a case for interfering with the impugned proceedings of reopening the assessment. Needless to state that it is open to the petitioner to produce the relevant details required for completing the assessment, pursuant to the impugned proceedings. Accordingly, the Writ Petition fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index:Yes/No.  
Speaking/Non-speaking order  
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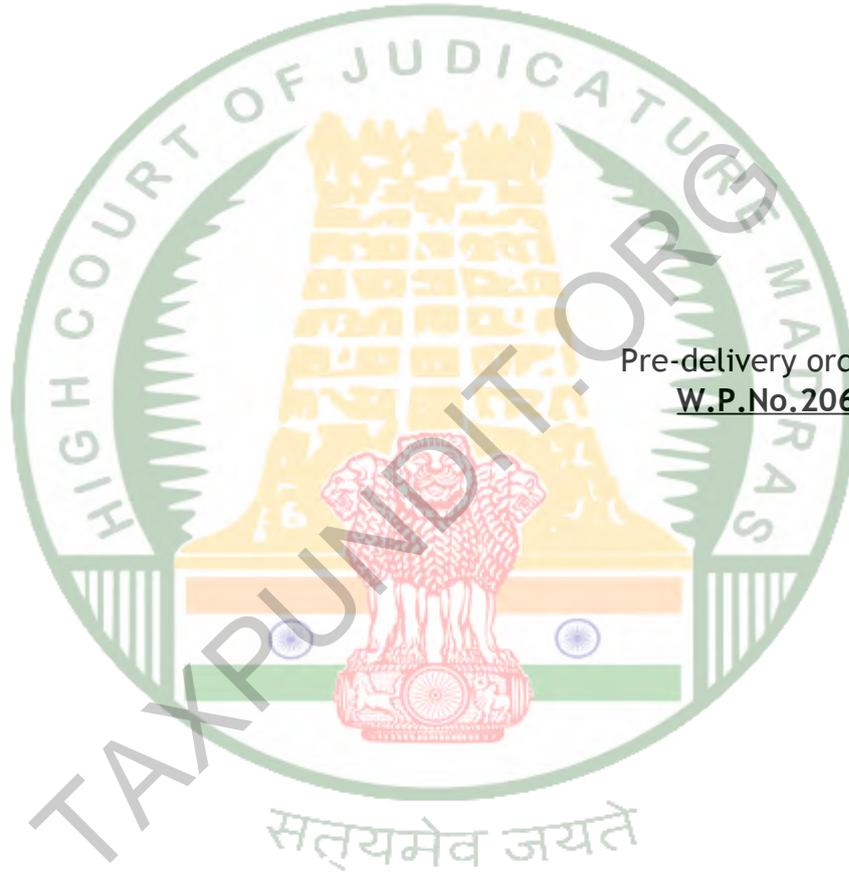
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K.RAVICHANDRABAABU,J.

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Pre-delivery order made in  
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