

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26-04-2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP No.12793 of 2018
And
WMP No.15016 of 2018

Palaniammal Palaniappan

.. Petitioner

vs.

Income Tax Officer,
Ward 2(2), Circle-2,
O/o.JCIT Range-2,
No.3, Gandhi Road,
Salem-636 007.

.. Respondent

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records relating to the Notice issued by the respondent in ITBA/AST/S/148/2017-18/1009408121(1) for the AY 2011-2012 dated 24.03.208 and dispatched on 06.04.2018 and quash the same.

For Petitioner

: Mr.Niranjan Rajagopalan for
M/s.G.R.Associates

For Respondent : Mr.A.P.Srinivas,
Senior Standing Counsel for Income
Tax.

ORDER

The notice under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as the 'Act', in short) issued by the respondent in proceedings dated 24.03.2018 for the assessment year 2011-2012 is under challenge in the present writ petition.

2. The learned counsel appearing on behalf of the writ petitioner mainly contended that the notice impugned issued under Section 148 of the Act is beyond the period of limitation of six years from the end of the relevant assessment year and therefore, the impugned notice itself is null and void.

3. The respondent has no jurisdiction to issue notice in view of the period of limitation contemplated under Section 147 of the Act and the writ petition is filed on the sole ground that the reasons for reopening is yet to be furnished to the assessee in the present case.

4. The learned Senior Standing Counsel appearing on behalf of the respondent, contended that as per the principles laid down in the case of **GKN Driveshafts (India) Ltd vs. Income Tax Officer and Others [259 ITR 19]**, the assessee has to file returns and the objections thereon regarding the proceedings initiated under Section 147 of the Act. Only after following the principles laid down by the Apex Court in the case of **GKN Driveshafts (India) Ltd** (cited supra), the petitioner would be in a position to know on what basis the reopening of assessment initiated under Section 148 of the Act and therefore, the writ petition is not maintainable and is liable to be dismissed.

5. The learned Senior Standing Counsel appearing on behalf of the respondent with reference to the limitation made a submission that the Income Tax Officer sent a complaint to the Senior Postmaster, Salem in letter dated 01.06.2018 regarding service of notice under Section 148 issued from the Office of the respondent on 28.03.2018. The Senior Postmaster, Salem, HPO sent a reply on 04.06.2018 stating that the letter was

dispatched and further, the Income Tax Officer issued a letter to the Postmaster on 10.02.2020 and the bills are also enclosed. In order to establish the said documents, an additional typed set of paper is also filed by the respondent.

6. In view of these facts and circumstances, if at all the ground regarding the limitation exists, then the petitioner is at liberty to raise the same before the Authority Competent and certainly not before this Court.

7. The notice under Section 148 of the Act, which is impugned in the present writ petition, reveals that the respondent has reason to believe that the income chargeable to tax for the assessment year 2011-2012 has escaped assessment within the meaning of Section 147 of the Act.

8. Thus the procedures as contemplated in case of **GKN Driveshafts (India) Ltd** (cited supra) is to be followed for the purpose of further adjudication and this Court is of an opinion that the present writ petition is premature.

9. The writ against a notice is not entertainable in a routine manner. Undoubtedly, a notice can be challenged if the authority issued such notice has no competence of jurisdiction or if the notice is issued beyond the period of limitation.

10. However, in the present case, the respondent has filed certain documents to establish that the notice was issued within the period of limitation and an additional typed set of paper is also filed. Thus, the petitioner is at liberty to raise the point of limitation before the authority with relevant documents and evidences and the Authority Competent is well within his power to adjudicate the same and take decision on merits and in accordance with law.

11. With the above observations, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

Index : Yes/No.
Internet : Yes/No.
Speaking Order/Non-Speaking Order.
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S.M.SUBRAMANIAM, J.

Svn

To

Income Tax Officer,
Ward 2(2), Circle-2,
O/o.JCIT Range-2,
No.3, Gandhi Road,
Salem-636 007.



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