

W.P No.13579 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated : 04.01.2024

C O R A M

The Hon'ble Mr. Justice **SENTHILKUMAR RAMAMOORTHY**

Writ Petition No.13579 of 2023

&

WMP Nos.13256, 13257 & 13258 of 2023

Annam Rajasekher Bindu
W-113, III Avenue, Anna Nagar,
Chennai 600 040
PAN: BNKPB3637C

... Petitioner

vs.

1. The Income Tax Officer,
Non Corporate Ward - 17(6)
Income Tax Department,
No.121, Nungambakkam High Road,
Chennai-600 034.
2. The Principal Commissioner of Income Tax
Chennai
Income Tax Department
No.121, Nungambakkam High Road,
Chennai-600 034.
3. The Principal Chief Commissioner of Income Tax
Tamilnadu & Puducherry
Income Tax Department,
No.121, Nungambakkam High Road,
Chennai-600 034.

... Respondents



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PRAYER : Petition filed under Article 226 of the Constitution of India

WEB COPY praying to issue a writ of Certiorari to call for the records of the Writ Petitioner on the file of the 1st Respondent to quash the impugned order u/s. 148A(d) of the Income Tax Act, 1961 dated 28.03.2023 in DIN & Notice No.ITBA/AST/F/148A/2022-23/1051466692(1) for the Assessment Year 2016-17.

For Petitioner : Mr.A.S.Sriraman

For Respondents: Dr.B.Ramaswamy,

Senior Standing Counsel (Income Tax)

ORDER

The petitioner challenges an order dated 28.03.2023 under Section 148A(d) of the Income Tax Act, 1961 (the Income Tax Act) and the consequential notice dated 28.03.2023 under Section 148 thereof.

2. The petitioner received a notice dated 28.02.2023 under Section 148A(b) of the Income Tax Act calling upon the petitioner to show cause as to why a notice under Section 148 should not be issued in respect of the transactions specified in the annexure to the notice.

A reply dated 03.03.2023 was issued by the petitioner in respect



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thereof. Thereafter, the impugned order was issued concluding that

it is a fit case for issuance of notice under Section 148 of the Income Tax Act. This writ petition was filed in the said facts and circumstances.

3. Learned counsel for the petitioner assails the impugned order on three grounds. The first ground is that the notice was issued under Section 148A(d) entirely on the basis of information obtained from the Insight Portal in accordance with the risk management strategy of the Income Tax Department. In support of the contention that information obtained on the Insight Portal cannot be the sole basis for issuance of notice under Section 148, learned counsel relied upon the judgment of the Bombay High Court in *Anwar Mohammed Shaikh v. Assistant Commissioner of Income Tax and Others in W.P.No.2836 of 2022, order dated 13.03.2023*, particularly paragraphs 24 and 25 thereof.

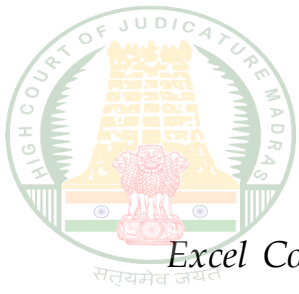
4. The next submission of learned counsel was that there is no direct or live link between the information obtained from the



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Insight Portal and the income allegedly escaping assessment, and

that such direct link is an essential prerequisite for the issuance of a notice under Section 148. In support of this proposition, learned counsel relied on the judgment of the Bombay High Court in *Digil Electronics Pvt. Ltd. v. Assistant Commissioner of Income Tax and Others* in W.P.No.1798 of 2022, order dated 08.03.2023, particularly paragraph 10 thereof. The last ground on which the impugned order was challenged is that a finding was recorded therein on an issue not raised in the show cause notice. In specific, he pointed out that it is recorded in the impugned order that immovable property was purchased for the sale consideration of Rs.1,25,00,000/-, whereas the guideline value on which stamp duty was paid was Rs.1,42,75,000/-. On this basis, the impugned order records that the differential sum of Rs.17,75,000/- is assessable under Section 56(2)(vii)(b) of the Income Tax Act as income from other sources. Learned counsel submits that the show cause notice did not call for an explanation with regard to the difference between the sale consideration and guideline value and, therefore, the petitioner was denied an opportunity to respond. By placing reliance on the judgment of the Calcutta High Court in



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Excel Commodity and Derivative (P.) Ltd. v. Union of India, [2023] 150

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Taxmann.com 94 (Calcutta), particularly paragraph 8 thereof, learned counsel submitted that Explanation 1 to Section 148 should not be lightly resorted to for purposes of re-opening an assessment.

5. In response to these submissions, Dr.Ramasamy, learned senior standing counsel for the respondents, contended that the impugned order contains adequate reasons and does not warrant interference. From internal page 3 of the order, learned counsel pointed out that it is recorded therein that the market value of the property was Rs.1,45,75,000/-, whereas the sale consideration was Rs.1,25,00,000/-. According to learned senior standing counsel, the petitioner was put on notice on this issue in the show cause notice, as is evident from the second item in the annexure thereto which indicates that a transaction of a market value of Rs.1,42,75,000/- took place. Therefore, he submits that the petitioner had the opportunity to respond but failed to provide a satisfactory explanation to the show cause notice.



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6. He also pointed out that the impugned order records that the petitioner did not provide any documentary evidence for receipt of sums of Rs.31,25,000/- and Rs.8,75,000/- by way of gift from her mother, Sri A.Premaleela. In conclusion, Dr.Ramasamy submitted that the issuance of notice under Section 148 is a preliminary step and that the petitioner has statutory remedies against any orders of re-assessment passed pursuant thereto. He also referred to his counter affidavit and the judgments in *Red Chilli International Sales v. ITO (2022) 140 Taxmann.com* and *Firm Rasulji Buxji Kathawala v. Income Tax Commissioner, Delhi, AIR 1957 Raj 54*, for the proposition that the present writ petition is premature and should not be entertained.

7. The question that arises upon considering the rival contentions is whether a case is made out to exercise discretionary jurisdiction. The show cause notice dated 28.02.2023 was issued on the basis of information gathered from the Insight Portal. By the show cause notice, the petitioner was called upon to provide an explanation with regard to the details set out in the annexure thereto and show cause as to why a notice under Section 148 should not be issued.



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The annexure contains a table with three entries. The first two entries relate to the purchase of an immovable property. The last entry relates to a TDS statement for a sum of Rs.1,04,563/-.

8. In response to this show cause notice, the petitioner issued a reply on 03.03.2023. In the said reply, the petitioner admits that she purchased an old residential apartment on 05.10.2015 under registered Document No.2963 of 2015. She states that the cost of purchase was Rs.1,25,00,000/-. The source of funds have been explained in paragraph 3 of the reply. The petitioner has stated that she availed of a loan of Rs.93,75,000/- from Sundaram BNP Paribas. The sanction letter relating thereto was enclosed. As regards the remaining sale consideration, the petitioner stated that she received gifts of Rs.31,25,000/- and Rs.8,75,000/- from her mother. The petitioner also states that she had savings of Rs.2,69,000/- which were used for this purpose. Thereafter, the petitioner has set out particulars of the PAN of her mother and mentioned that her mother's returned income for the Assessment Year 2016-17 was Rs.43,42,000/-. In conclusion, the petitioner stated that the property

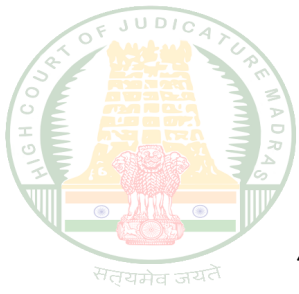


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purchased by her was let out for a monthly rent of Rs.25,000/-, and that, after adjusting the interest paid on the home loan, there was a net loss from the property.

9. In the impugned order, at paragraphs 1 to 3, the background has been set out, including by extracting in full the reply of the assessee. The operative portion of the order follows thereafter and the same is set out below:

“On perusal of the sale deed revealed that there is a difference between the sale amount shown in sale deed and the Market Value, i.e. the stamp duty value. Market Value was Rs.1,42,75,000/- but the sale shown in sale deed was Rs.1,25,00,000/- (1,42,75,000/- - 1,25,00,000/- = 17,75,000/-). The difference of Rs.17,75,000/- is assessable u/s.56(2)(vii)(b) of IT Act. It is also seen that there is no documentary evidence for the value of Rs.31,25,000 and Rs.8,75,000/- mentioned as the gift deed from Smt.A.Premaleela, as claimed by the assessee also there is no evidence for the value of Rs.2,69,000 mentioned as savings.



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4. From the details/reply furnished by the assessee it is seen that the assessee has not disputed the evidence in the form of information provided by the INSIGHT PORTAL in accordance with the Risk Management Strategy. The document/evidence in possession reveal that the income chargeable to tax is represented in the form of expenditure spent towards investment in immovable property exceeding Rs.50 lakhs.

5. In view of the above, I am satisfied that it is a fit case for issuance of notice u/s. 148 of the IT Act, 1961 for the A.Y.2016-17.

6. This order u/s.148A(d) of the Income-tax Act, 1961 is passed with the prior approval of the specified authority (Principal Chief Commissioner of Income-tax, Tamil Nadu and Puducherry) u/s 151 of the Income-tax Act, 1961.”

10. On perusal of the operative portion of the order, it is clear that the following findings were recorded:



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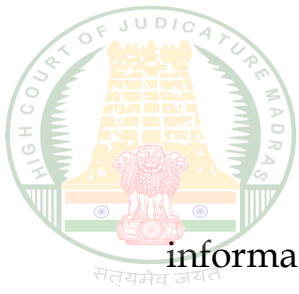
(i) the difference of Rs.17,75,000/- between the guideline

value of Rs.1,42,75,000/- and the sale consideration of Rs.1,25,00,000/- is assessable under Section 56(2)(vii)(b) of the Income Tax Act.

(ii) There is no documentary evidence for the amounts of Rs.31,25,000/- and Rs.8,75,000/- received as gift from the petitioner's mother.

(iii) There is no evidence for the sum of Rs.2,69,000/- said to be available by way of savings.

11. As regards the first finding, the show cause notice did not contain any reference to the difference between the guideline value and the sale consideration and call for an explanation. Instead, skeletal information regarding the purchase of the relevant immovable property was provided under the first two entries. On this basis, it cannot reasonably be expected of the noticee to provide an explanation with regard to the difference. While the impugned order refers to the lack of documentary evidence with regard to the gifts received from the petitioner's mother, although necessary



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information was provided by the petitioner, there is no discussion or

evidence of consideration of the income tax returns of the petitioner's

mother so as to test the veracity of the petitioner's explanation.

Moreover, the explanation provided by the petitioner with regard to

the receipt of a home loan of Rs.93,75,000/- from Sundaram BNP

Paribas, which formed the alleged principal source for the purchase,

has not been dealt with in the impugned order. Unless an assessee's

response to the show cause notice is duly considered before a

decision is taken to issue notice under Section 148, the statutory

mandate of a prior show cause notice would be reduced to an empty

formality. Therefore, I am of the view that the impugned order calls

for interference and the said order is hereby quashed. Consequently,

the matter is remanded on terms set out below.

12. Because the impugned order raised an issue not previously raised in the show cause notice, it becomes necessary for the respondents to issue a fresh show cause notice calling for an explanation with regard to all issues that warrant issuance of a notice under Section 148 of the Income Tax Act. After providing a



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reasonable opportunity to the petitioner to respond to such notice, the first respondent is directed to issue a fresh order under Section 148A(b) of the Income Tax Act. The above process shall be concluded within a maximum period of three months from the date of receipt of a copy of this order. The petitioner is directed to extend full co-operation to ensure that the above exercise is completed within the time specified.

13. W.P. No.13579 of 2023 is disposed of on the above terms. Consequently, connected connected miscellaneous petitions are closed. There shall be no order as to costs.

04.01.2024

Index : Yes/No

Internet : Yes/No

Neutral Citation : Yes/No

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SENTHILKUMAR RAMAMOORTHY, J

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