T.Elangovan vs The Income Tax Officer

ID: F2J-C-2612 **Court:** Madras High Court
Case: W.P.(MD)Nos.11758 of 2006 to 11761 of 2006 & 865 to 877 of 2007 **Date:** 2017-10-06

Madras High Court T.Elangovan vs The Income Tax Officer on 6 October, 2017 Author: M.V.Muralidaran Bench: M.V.Muralidaran

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT Dated: 06.10.2017 CORAM THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.(MD)Nos.11758 of 2006 to 11761 of 2006 & 865 to 877 of 2007 and connected miscellaneous petitions

W.P.(MD).No.11758 of 2006

T.Elangovan .. Petitioner

.Vs.

The Income Tax Officer, Ward ? I (2), Arulannanda Nagar, Thanjavur. .. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondent to dispose of the petitioner's objections dated 23.12.2006 by way of a speaking order before passing the final orders under Section 147 of the Income Tax Act, 1961, if any, in respect of the assessment years 1999-2000 to 2002-2003.

!For Petitioner : Mr.T.Ayyasamy ^For Respondents : Mr.Krishnamoorthy

:COMMON ORDER

The writ petition in W.P(MD)No.11758 of 2006 has been filed to direct the respondent to dispose of the petitioner's objections dated 23.12.2006 by way of a speaking order before passing the final orders under section 147 of the Income Tax Act 1961, if any, in respect of the assessment years 1999-2000 to 2002-2003. 2.The writ petition in W.P(MD)No.11759 of 2006 has been filed to direct the respondent herein to dispose of the petitioner's objections dated 23.12.2006 by way of a speaking order before passing the final orders under section 147 of the Income Tax Act 1961, if any, in respect of the assessment years 1999-2000 to 2004-2005. 3.The writ petition in W.P(MD)No.11760 of 2006 has been filed to direct the respondent herein to dispose of the petitioner's objections dated 23.12.2006 by way of a speaking order before passing the final orders under section 147 of the Income Tax Act 1961, if any, in respect of the assessment years 1999-2000 to 2002-2003. 4.The writ petition in W.P(MD)No.11761 of 2006 has been filed to direct the respondent herein to dispose of the petitioner's objections dated 23.12.2006 by way of a speaking order before passing the final orders under section 147 of the Income Tax Act 1961, if any, in respect of the assessment years 1999-2000 to 2002-2003. 5.The writ petition in W.P(MD)No.865 of 2007 has been filed to call for the records of the respondent in his proceedings in PAN/GIR No.R-6698 dated 29/12/2006 relating to the assessment year 1999-2000 and quash the same. 6.The writ petition in W.P(MD)No.866 of 2007 has been filed to call for the records of the respondent in his proceedings in PAN/GIR No.R-6698 dated 29/12/2006 relating to the assessment year 2000-2001 and quash the same. 7.The writ petition in W.P(MD)No.867 of 2007 has been filed to call for the records of the respondent in his proceedings in PAN/GIR No.R-6698 dated 29/12/2006 relating to the assessment year 2000-2001 and quash the same. 8.The writ petition in W.P(MD)No.868 of 2007 has been filed to call for the records of the respondent in his proceedings in PAN/GIR No.R-6698 dated 29/12/2006 relating to the assessment year 2000-2001 and quash the same. 9.The writ petition in W.P(MD)No.869 of 2007 has been filed to call for the records of the respondent in his proceedings in PAN/GIR No.M-3207 dated 29/12/2006 relating to the assessment year 2000-2001 and quash the same. 10.The writ petition in W.P(MD)No.870 of 2007 has been filed to call for the records of the respondent in his proceedings in PAN/GIR No.M-3207 dated 29/12/2006 relating to the assessment year 2000-2001 and quash the same. 11.The writ petition in W.P(MD)No.871 of 2007 has been filed to call for the records of the respondent in his proceedings in PAN/GIR No.E-2750 dated 29/12/2006 relating to the assessment year 1999-2000 and quash the same. 12.The writ petition in W.P(MD)No.872 of 2007 has been filed to call for the records of the respondent in his proceedings in PAN/GIR No.E-2750 dated 29/12/2006 relating to the assessment year 2000-2001 and quash the same. 13.The writ petition in W.P(MD)No.873 of 2007 has been filed to call for the records of the respondent in his proceedings in PAN/GIR No.E-2750 dated 29/12/2006 relating to the assessment year 2001-2002 and quash the same. 14.The writ petition in W.P(MD)No.874 of 2007 has been filed to call for the records of the respondent in his proceedings in PAN/GIR No.2202-E dated 29/12/2006 relating to the assessment year 1999-2000 and quash the same. 15.The writ petition in W.P(MD)No.875 of 2007 has been filed to call for the records of the respondent in his proceedings in PAN/GIR No.E-2202 dated 29/12/2006 relating to the assessment year 2000-2001 and quash the same. 16.The writ petition in W.P(MD)No.876 of 2007 has been filed to call for the records of the respondent in his proceedings in PAN/GIR No.E-2202 dated 29/12/2006 relating to the assessment year 2001-2002 and quash the same. 17.The writ petition in W.P(MD)No.877 of 2007 has been filed to call for the records of the respondent in his proceedings in PAN/GIR No.E-2202 dated 29/12/2006 relating to the assessment year 2002-2003 and quash the same. 18.There are two set of batch writ petitions are filed by the respective petitioners. One set of writ petitions are filed challenging the impugned order of re-assessment made by the respondent for the assessment years 1999-2000 to 2002-2003. The other set of writ petitions are filed praying for a direction to the respondent/assessment officer to pass orders on the objection filed by the petitioners to the show cause notice of the respondent. 19.The case of the petitioner in W.P(MD)No.11758/2016 and 871 to 873 of 2007 that she is a doctor by profession. Apart from her professional income, she was also having income from agriculture operation. The income derived from the agricultural operation was also included in the return filed by her husband as he is the Manager of Hindu undivided family. The petitioner has filed the returns for her professional income for the Assessment year 1999- 2000 to 2002-2003 before the respondent. The Assessment Officer framed Assessment for the above said assessment period after holding elaborate enquiry. While so, the respondent herein issued notice on 30.03.2006 under section 148 of Income Tax Act, 1961 for re-assessment of the alleged escaped income for the assessment year 1999-2000 to 2004-2005 and for that the petitioner was called upon to file return within 30 days. According to the petitioner the returns for the assessment years 1999-2000 to 2002-2003 were already filed and assessments were also finalized. Further, for the assessment years 2003-2004 and 2004-2005 the petitioner filed returns on 15.02.2006 before the respondent. The Assessing Officer has no Jurisdiction to issue the notice under section 148 of the act unless he has reason to believe that income has escaped assessment. Since the respondent insisted the petitioner to file fresh returns, she filed fresh returns for the assessment years 1999-2000 to 2002-2003 disclosing the same taxable income on 21.12.2006. Thereafter the Assessing Officer by his communication dated 22.12.2006 wanted the petitioner to the reason disclosed the show cause notice dated 14.12.2006 as the reasons to believe. Therefore, the petitioner filed detailed objections on 23.12.2006 challenging the Jurisdiction of respondent to issue notice under section 148 of the said act. The Assessing Officer passed final order without disposing the objection of the petitioner dated 23.12.2006. Hence, the petitioner filed writ petition before this Court in W.P.No.11661/2006 and challenged the above said final order. This Court passed interim order in M.P(MD)No.1 of 2006 by holding that in case if any order is passed by the respondent during the pendency of the above writ petition, it would be subject to the result of the writ petition. 20.After the order passed by this Court, the petitioner intimated the same to the respondent immediately on 28.12.2006 itself. However, at about 06.00 p.m, on 28.12.2006 a letter from the respondent dated 27.12.2006 was served on the petitioner's authorized representatives calling upon the petitioner to file her objection to the show cause notice dated 14.12.2006 before 12 noon on 29.12.2006. However, on 29.12.2006, when the petitioner produced a copy of the order passed by this Court in M.P(MD)No.1 of 2006 and expressed her inability to file objection on merits. On the other hand, the respondent sent a letter dated 29.12.2006 to the petitioner of the re- assessment order of even date through registered post and the same was received by her on 02.01.2007. 21.For the first time the respondent has disclosed the reasons recorded under section 148(2) of the act for re-opening the assessment in the letter dated 29.12.2006. The reasons recorded under section 148(2) of the letter dated 29.12.2006 as well as in the assessment order and the reasons disclosed in the show cause notice dated 14.12.2006 are at complete variance with each other. The reason recorded under section 148(2) of the act by the respondent has nothing to do with the reason adduced in the show cause notice dated 14.12.2006 and the Assessing Officer has deliberately and wantonly withhold the reason recorded under section 148(2) of the act with ulterior motive and malafide intention. 22.The petitioner further contended that in all the 13 re-assessments made in the names of Dr.T.Elangovan (HUF), Dr.T.Elangovan (Individual), S.Murugan and Dr.Radhika Rani additions made by the Income Tax Officer on account of cost of constructions works out to Rs.44,12,360/-. If the cost of constructions already assessed in the original assessment order is taken into account, the total cost of constructions comes to Rs.1,09,96,154/- (Rs.65,83,794 + Rs.44,12,360). It is not the case of the assessing Officer in the show cause notice that the cost of construction of Abhi & Abhi Towers is Rs.1,09,96,154/-. Therefore, the petitioner has contended that the assessing officer has arbitrarily made additions to his whims and fancies with malafide intention and the said additions has not been disclosed in the show cause notice dated 14.12.2006. As per the proviso to section 147 of the Act in cases where in the initiation of proceedings is beyond 4 years from the assessment year, the assessing officer must necessarily record not only his reasonable belief that income had escaped assessment but also that the escapement is on account of assessee's failure to disclose the material facts. Therefore, according to the petitioner, since the assessing officer has committed a jurisdictional error and the assessment orders have been passed without following the mandatory procedures laid down by the Hon'ble Apex Court in a case of G.K.N Drive shafts (India) Ltd as well as the rudimentary principles of natural justice. Hence, the petitioner prays to quash the impugned assessment order of the respondent dated 29.12.2006 for the assessment year 1999-2000 to 2002-2003. 23.The learned counsel for the respondent in his counter filed on 26.10.2000 submitted that the assessment of the petitioner for the year 1999- 2000 to 2001-2002 were reopened under section 147 of the Income Tax Act by issuing notice under section 148 on 30.3.2006 after recording reasons for the reopening. Further, it is also stated by the respondent that the reason recorded by the respondents under section 148(2) of the act need not be given until the assessee responds to the notice as directed by the Hon'ble Apex Court in the case of G.K.N Drive shafts (India) Ltd.,. Further it is justified by the respondent that since no express prohibition in the Income Tax Act to initiate action under section 148 of the Act during the relevant period when an appeal or enhancement proceedings are pending before the Commissioner of Income (Appeals) and therefore, the averment that the assessing officer has no jurisdiction to reopen the assessment is false. However, it is also averred in the affidavit filed on behalf of the respondent that even assuming even without admitting that the reason if not given is not an illegality but an irregularity. Hence the respondent prayed to dismiss the writ petitions. 24.Heard both sides, all the materials available on records are perused. 25.As far as W.P(MD)Nos:11758 of 2006 to 11761 of 2006, the prayer of the writ petitioner is for Mandamus to direct the respondent/assessing officer to dispose of the petitioner's objections dated 23.12.2006 by way of a speaking order before passing the final orders under section 147 of the Income Tax Act 1961, if any, in respect of the assessment years 1999-2000 to 2004-2005. As far as W.P(MD)Nos:865 to 877 of 2007 the prayer of the petitioner is to issue a Writ of Certiorari, calling for the records of the respondent in his proceedings in PAN/GIR No.E-2202 dated 29/12/2006 relating to the assessment year 2001-2002 and quash the same. 26.All these writ petitions are relating to the assessment years as referred above under the provisions of Income Tax Act 1961. In all these cases the original assessment orders were passed on 28.3.2003 under section 143 (3) of the act. After the assessment, since the petitioners in the above writ petitions aggrieved, appeals were filed before the Commissioner of Income Tax (Appeals) and they are still pending. In the pendency of the appeals these writ petitions have been filed before this Court. 27.The contentions of the writ petitioners are that since the Assistant Commissioner concerned after elaborate enquiry fixed the assessment, the order of re-assessment by the Income Tax Officer is impermissible and he cannot issue such reassessment as an appellate authority. Hence, prima facie the Income Tax Officer has no jurisdiction as held in Muthu Metals Case reported in 1993 (3) MTCR 300 wherein, it is held that it is not proper for an imperior officer to open the assessment finalized by the superior officer ?Sub Section 2 of Section 148 enjoins upon the assessing officer to record his reasons before issuing the notice of reassessment under Sub Section 1. The reasons so recorded should be made available to the assessee. Even after a specific request was made to you to put forth ?the reasons to believe? that led you to believe that income had escaped from assessment, you have merely stated that the show cause notice dated 14.12.2006 may be treated as ?reasons to believe?. I strongly apprehend that all the allegations in the show cause notice could not be the reasons recorded before issuance of notices u/s 148. It also shows non-appliance of mind. Hence, it is needless to say that you have failed to give me the proper ?reasons to believe?. 28.A perusal of the impugned assessment order would so that the assessment has been reopened for the reasons recorded to believe under assessment and escapement of income within the meaning of section 147 of the act. However, it is pointed out in the impugned order that the assessee did not filed any return or any letter stating that the returns filed earlier may be treated as return in response to the notice under section 148 of the Act. But the learned counsel appearing for the petitioner would submit absolutely there is no reference in the assessment order about the previous written representation dated 23.12.2006, which was given elaborately, hence, the impugned order of assessment is liable to be set aside. 29.At this juncture, when the affidavit filed by the respondent is perused there is no answer on the points raised by the petitioners in respect of the non-consideration of the representation in response to the notice issued under section 148 of the Act. Hence, the reassessment proceeding through the assessment order, in the opinion of the Court is not as per law. Once the assessing officer has decided to reopen the assessment, he has necessarily liable to issue a notice as required under the act. At the same time, when the notice issued by the assessing officer is responded by the assessee through written representation, it is mandatory on the part of the assessing officer to consider and answer the same before the passing of assessment order. It is pointed out in the representation of the petitioner dated 23.12.2006, in CIT ? Vs- Simon Carves Ltd., reported in 76 CTC (SC) 418, the Hon'ble Supreme Court has held that the Income Tax Officer while ordering reassessment does not sit as a Court of appeal over the Income Tax Officer, who framed the original assessment. Further in the said representation, several other case laws were referred, but the respondents have conveniently omitted to answer in the impugned assessment order and also in the counter filed. 30.At the same time, the written submissions filed on behalf of the petitioners would show that for the Asst. years relating to 1999-2000 to 2002-2003. In all these cases, original assessment orders were passed on 28.03.2003 under section 143(3) of the Act. As against the original assessment orders, the petitioners/Assesses have filed statutory appeals before the Commissioner of Income Tax (Appeals), Thiruchirapalli, and after obtaining reports from the respondent, the Commissioner of Income Tax (Appeals) have also initiated enhancement proceedings and they are still pending. Hence, it is needless to say that the original assessment proceedings have not attained finality. 31.At the same time, this Court is very conscious that the matter pertaining to the collection tax for the Government. On the other hand, it is not disputed by the learned counsel for the respondent in his affidavit that the pendency of the appeals before the authority concerned filed by the petitioner. Hence, it is not for this Court to discuss or go into the route of the case, at this juncture, in this writ petitions. However, in the considered opinion of this Court, it is for the appellate authority i.e. the Commissioner of Income Tax (Appeals), Thiruchirappalli has to finalize the appeals at the earliest point of time by strictly complying with the procedure as contemplated under the Income Tax Act by taking note of the assessments pertaining to the years 1999-2000 to 2002-2003. 32.With this observation all these writ petitions are allowed by setting aside the impugned assessment order and the all the cases pertaining to the impugned assessment order are remanded back to the Commissioner of Income Tax (Appeals), Thiruchirappally for disposal by affording opportunity to the parties concerned. Further by taking notice of the fact that the assessment order relating to the assessment year 1999-2000 to 2002-2003, the Commissioner of Income Tax (Appeals), Thiruchirappally is directed to finalize the appeals within a period of two months from the date of receipt of the copy of this order. No costs. Consequently, connected miscellaneous petitions are closed. To The Income Tax Officer, Ward ? I (2), Arulannanda Nagar, Thanjavur. .■