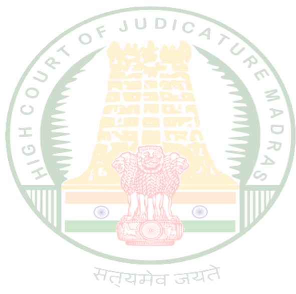

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2022

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Writ Appeal No. 2493 of 2021
and
C.M.P. No. 16191 of 2021

Charu K. Bagadia
Wife of Ketan C. Bagadia
No.28, Ritherdon Road
Vepery, Chennai - 600 007 .. Appellant

Versus

1. Assistant Commissioner of Income Tax-23(2), Mumbai
   104, 1st Floor, Matru Mandir
   Tardeo Road, Mumbai - 07

2. Assistant Commissioner of Income Tax
   Corporate Circle - 4 (2), Chennai
   Room No.433, 4th Floor
   Aaykar Bhavan, Main Building
   121, Nungambakkam High Road
   Chennai - 600 034 .. Respondents

Appeal filed under Clause 15 of The Letters Patent against the order dated 16.04.2021 passed in W.P. No. 34136 of 2018 on the file of this Court.

For Appellant : Ms.Vandana Vyas for Mr.R.Sivaraman

For Respondents : Mrs. Hema Muralikrishnan
Senior Panel Counsel

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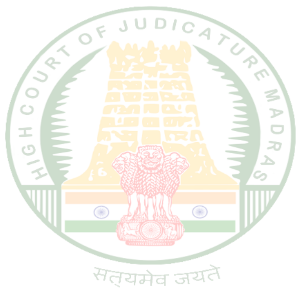
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JUDGMENT

R. MAHADEVAN, J.

At the outset, be it noted, it is settled law that *"a jurisdiction can neither be waived nor created even by consent and even by submitting to jurisdiction, an Assessee cannot confer upon any jurisdictional authority, something which he lacked inherently"*. The said ratio squarely applies to the case on hand.

2. The appellant is an assessee on the file of the second respondent. For the assessment year 2011-2012, she filed her return of income on 19.04.2012 admitting an income of Rs.11,60,000/-, which was processed by the Assessing Officer under Section 143 (1) of the Income Tax Act, 1961 (in short, "the Act"). While so, after a period of five years, she received a notice dated 28.03.2018 issued by the first respondent under Section 148 of the Act purportedly to re-assess the income of return submitted by her for the assessment year 2011-2012. In response, she submitted a reply dated 26.04.2018 stating that the first respondent has no jurisdiction to issue such a notice under Section 148 of the Act and therefore, she requested to drop the reassessment proceedings. Subsequently, the first respondent transferred the files pertaining to the appellant to the second respondent. Thereafter, the

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second respondent continued the reassessment proceedings by issuing a notice dated 14.12.2018 under section 143(2) r/w 129 of the Act, directing the appellant to appear and file return of income to the notice under section 148 of the Act along with supportive documents. Aggrieved over the same, the appellant preferred WP.No.34136 of 2018 to quash both the notices dated 28.03.2018 and 14.12.2018 issued by the respective respondents 1 and 2.

3. It was contended by the respondents before the writ court that the appellant had received a sum of Rs.53,50,000/- towards her share in respect of the property at Mumbai, from a developer within the jurisdiction of the first respondent and therefore, notice dated 28.03.2018 under section 148 of the Act was issued by the first respondent. When the appellant raised an issue of jurisdiction, the entire materials collected by the first respondent were sent to the second respondent for continuing the reassessment proceedings. Accordingly, the second respondent seized of the reassessment proceedings within whose jurisdiction the appellant resides. According to the respondents, in the original assessment proceedings for the assessment year 2011-2012, it was not known as to whether the appellant had disclosed the said sum of Rs.53,50,000/- received by her towards transfer of FSI rights in respect of the property situated at Mumbai and therefore, she was directed to appear before

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the second respondent and explain the same. In any event, there is tangible material evidence available to initiate reassessment proceedings against the appellant.

4. Upon hearing both sides, the learned Judge, having observed that the notice initially issued by the first respondent against the appellant though improper, need not be set aside, in view of the fact that the said proceedings were subsequently transferred to the Income Tax Authorities at Chennai; the commencement of the proceedings by issuing notice dated 14.12.2018 is in no way prejudiced the appellant; and she is at liberty to file her objections and avail an opportunity of hearing to be provided under the IT Act, dismissed the said writ petition, by the order impugned herein. Therefore, the appellant / writ petitioner is before this court with this appeal.

5.1. The learned counsel for the appellant would contend that the first respondent lacks jurisdiction to initiate the reassessment proceedings by issuing the notice dated 28.03.2018 knowing fully well that the appellant is not residing within the jurisdiction of the first respondent. Further, after a period of five years from the completion of the original assessment for the assessment year 2011-2012, the reassessment proceedings were initiated, alleging that

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some of the income was not disclosed by the appellant truly and fully. However, the fact remains that there was no income omitted to be included by the appellant for assessment during the assessment year in question. Therefore, the reassessment proceedings ought not to have been initiated by the first respondent against the appellant.

5.2. Adding further, the learned counsel for the appellant contended that when the reassessment proceedings initiated by the first respondent itself is invalid, the second respondent without issuing notice afresh under section 148 of the Act, cannot be permitted to continue the further proceedings by issuing notice dated 14.12.2018 invoking Section 129 of the Act. According to the learned counsel, even assuming that the reassessment proceedings are valid, as per Section 149 (b) of the Act, the second respondent cannot issue a notice under Section 148 of the Act beyond the period of six years from the end of the relevant assessment year. It is also submitted that the limitation period for initiation of reassessment proceedings for the assessment year 2011-12 came to an end on 31.03.2018; the second respondent, who is the jurisdictional assessing officer, did not issue any notice under Section 148 of the Act, before 31.03.2018 to reopen the return of income declared by the appellant; and therefore, the second respondent cannot ride upon the borrowed satisfaction of the first respondent to continue with the reassessment proceedings without

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issuance of notice under section 148 of the Act within the prescribed time frame, which vitiate the entire reassessment proceedings. However, the learned Judge erred in observing that there is no irregularity or infirmity in initiating the reassessment proceedings by the first respondent by issuing notice dated 28.03.2018 and transmitting the files to the second respondent, who in turn, issued notice dated 14.12.2018 for continuation of the reassessment proceedings; and dismissing the writ petition, by the order impugned herein.

5.3. The learned counsel placed reliance on the decisions of various High Court and the Hon'ble Supreme Court and ultimately, submitted that when once the initiation of the reassessment proceedings is without jurisdiction and held to be invalid, the other consequential proceedings must also necessarily held to be invalid; and therefore, the writ appeal will have to be allowed, by setting aside the order impugned herein and the notices impugned in the writ petition.

6. Opposing this appeal, the learned Senior Panel Counsel appearing for the respondents would contend that the reassessment proceedings were initiated by issuing notice under section 148 of the Act by the first respondent inasmuch as the particulars relating to the PAN number of the appellant were

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not available and the details about the developer, who had made payment to the appellant, were not furnished. However, when the issue of jurisdiction was raised by the appellant, the first respondent transferred the entire files relating to the reassessment proceedings of the appellant to the second respondent. The appellant, without filing her return of income to the notice under section 148 of the Act for the relevant assessment year to the second respondent, approached this Court invoking Article 226 of the Constitution of India. Even in the writ proceedings, the appellant did not state anything about the amount received by her. Therefore, the learned Judge justified the notices issued by the respondents and rightly dismissed the writ petition, granting liberty to the appellant to submit her objections to the notice dated 14.12.2018 issued by the second respondent and also avail an opportunity of personal hearing to be provided. Thus, according to the learned counsel, the order of the learned Judge does not require any interference at the hands of this court.

7. Heard both sides and perused the materials available on record.

8. The subject matter of challenge before the writ court was the notice dated 28.03.2018 issued by the first respondent under section 148 of the Act and the consequential notice dated 14.12.2018 issued by the second

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respondent under section 143(2) r/w 129 of the Act, for the assessment year 2011-12. The learned Judge decided the same against the appellant / writ petitioner.

9. In this writ appeal, the learned counsel for the appellant made elaborate contentions both on legal and factual aspects. Firstly, in law, it is submitted that the first respondent lacks jurisdiction to issue reassessment notice under section 148 of the Act; when the same was pointed out by the appellant, the first respondent transferred the entire files to the jurisdictional assessing officer / second respondent, who inturn, continued the reassessment proceedings by issuing notice under section 143(2) r/w 129 of the Act, without issuing any fresh notice under section 148 of the Act; and hence, the notices so issued by the respective respondents are invalid and the same vitiate the reassessment proceedings. Secondly, on facts, it is contended that the appellant disclosed fully and truly all the material facts necessary for her assessment for the relevant assessment year and there was no income omitted to be included by way of reassessment proceedings. However, the learned Judge failed to appreciate the same in a proper perspective and erred in dismissing the writ petition filed by the appellant herein.

10. On the other hand, the learned senior panel counsel appearing for

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the respondents reiterating the averments made in the counter affidavit, justified the reassessment proceedings initiated by the respondents against the appellant, as affirmed by the learned Judge in the writ petition.

11. Before proceeding further, it is but relevant to refer to the provisions of law, based on which the notices impugned in the writ petition were issued by the respondent authorities, viz., section 148 and 129 of the Act, as follows:

"Issue of notice where income has escaped assessment

148.(1)Before making the assessment, reassessment or recomputation under section 147, the Assessing Officer shall serve on the assessee a notice requiring him to furnish within such period as may be specified in the notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139:

***Provided** that in a case -*

(a)Where a return has been furnished during the period commencing on the 1st day of October, 1991 and ending on the 30th day of September, 2005 in response to a notice served under this section, and

(b)Subsequently a notice has been served under sub-section (2) of section 143 after the expiry of twelve months specified in the proviso to sub-section (2) of section 143, as it stood immediately before the amendment of said sub-section by the Finance Act, 2002 (20 of 2002) but before the expiry of the time limit for making the assessment, re-assessment or recomputation as specified in sub-section (2) of section 153, every such notice referred to in this clause shall be deemed to be a valid notice:

***Provided further** that in a case -*

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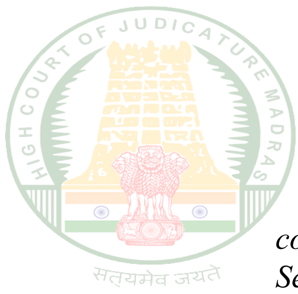
(a)Where a return has been furnished during the period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commencing on the 1st day of October, 1991 and ending on the 30th day of September, 2005, in response to a notice served under this section, and

(b)subsequently a notice has been served under clause (ii) of sub section (2) of section 143 after the expiry of twelve months specified in the proviso to clause (ii) of sub-section (2) of section 143, but before the expiry of the time limit for making the assessment, reassessment or recomputation as specified in sub-section (2) of section 153, every such notice referred to in this clause shall be deemed to be a valid notice.]

[Explanation.- For the removal of doubts, it is hereby declared that nothing contained in the first proviso or the second proviso shall apply to any return which has been furnished on or after the 1st day of October, 2005 in response to a notice served under this section.]

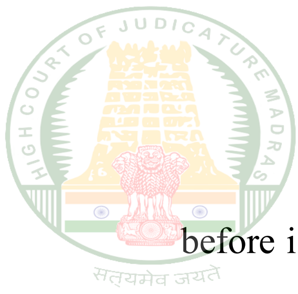
(2)The Assessing Officer shall, before issuing any notice under this section, record his reasons for doing so."

*"**Change of incumbent of an office:***

129.Whenever in respect of any proceeding under this Act an income-tax authority ceases to exercise jurisdiction and is succeeded by another who has and exercises jurisdiction, the income-tax authority so succeeding may continue the proceeding from the stage at which the proceeding was left by his predecessor:

***Provided** that the assessee concerned my demand that before the proceeding is so continued the previous proceeding or any part thereof be reopened or that before any order of assessment is passed against him, he be reheard."*

On a plain reading of the aforesaid provisions, it is apparent that section 148 provides for issuance of notice where income has escaped assessment and the assessing officer intends to make assessment, reassessment or recomputation under section 147. Under sub-section (1) to section 148, the assessing officer shall issue notice to the assessee requiring him/her to furnish a return of income in respect of which he/she is assessable for the relevant assessment year; and under sub-section (2) to section 148, the assessing officer shall



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before issuing any notice under this section, record his reasons for doing so. It is also crystal clear from the provisions of section 129 of the Act that the same is applicable, when there is a change of incumbent without any change of jurisdiction and one Assessing Officer is succeeded by another in the same office.

12. In the instant case, it could be seen that the assessment of the appellant was reopened upon receipt of credible information from the Directorate of Income Tax (I & CI), Mumbai, to the effect that she received a sum of Rs.53,50,000/- for transfer of her FSI right in the property at Mumbai. Pursuant to the same, the first respondent issued notice dated 28.03.2018 under section 148 of the Act stating that he has reasons to believe that the income of the appellant chargeable to tax for the assessment year 2011-12 has escaped assessment within the meaning of section 147 of the Act; and therefore, he proposed to assess/re-assess the income for the said assessment year and he directed the appellant to file her return of income in the prescribed form within 30 days from the service of notice. Upon receipt of the said notice, the appellant in her reply dated 26.04.2018, pointed out that she is a permanent resident of Chennai and her PAN is AAKPK7417K and an assessee on the file of the second respondent; and she therefore, requested the first

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respondent to drop the proposal. Consequently, the files pertaining to the reassessment of the appellant were transmitted to the second respondent. Thereafter, without issuing any fresh notice under section 148 of the Act, the second respondent / jurisdictional assessing officer continued the reassessment proceedings initiated by the first respondent, who lacks jurisdiction to issue notice under section 148 of the Act, and sent a notice dated 14.12.2018 under section 143(2) r/w section 129 of the Act to the appellant, calling upon her to appear either in person or through an authorised representative and produce the documents in support of the return of income filed by her. Thus, both the notices issued by the respondents 1 and 2 respectively were challenged by the appellant.

13. Reference was made by the learned counsel for the appellant to the following decisions:

(i)Shibani Dutta v. Commissioner of Income-tax [(2012) 26 taxmann.com 105 (Delhi), in which, it was held as under:

> ***"****10....The period of limitation gets extended under clause (iii) of Explanation I only by the time taken to reopen the whole or any part of the proceeding or giving an opportunity to the assessee (to be reheard) under the proviso to Section 129. If we turn to section 129 of the Act we find that it provides for the procedure to be followed when there is a "change of incumbent of an office". ...*
>
> *11.We do not see how this provision helps the Revenue. It is applicable when in the same jurisdiction, there is a change of incumbent*

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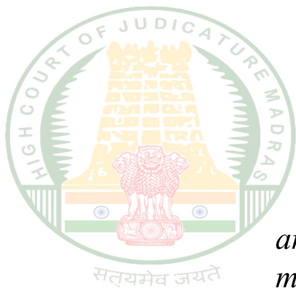
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and one Assessing Officer is succeeded by another. In such a case, the main Section provides that the successor – officer is entitled to continue the proceeding from the stage at which it was left by his predecessor subject to the caveat, expressed in the proviso, that if the assessee demands that before the proceeding is continued the previous proceedings or any part thereof shall be reopened or that before any assessment order is passed against him, he shall be reheard, such a demand has to be accepted. If as a result of accepting the assessee's demand under the proviso to section 129 some time is taken and the assessment proceedings cannot be completed within the normal period of limitation, then the period of limitation gets extended by such time taken for giving the assessee an opportunity to reopen the earlier proceedings or for rehearing. Section 129 is applicable to normal assessments made under section 143(3) of the Act as well as the block assessments made under section 158BC of the Act...."

(ii)Commissioner of Income-tax v. M.I.Builders (P) Ltd [(2014) 44 taxmann.com 360 (Allahabad)], wherein, it was observed as follows:

"17.Having heard learned counsel for the parties and perusing the records, we are of the view that on 29.3.2004, when the notice under section 148(1) of the Act was issued, ACIT, Range-IV, Lucknow have no jurisdiction over the Assessee on the date of issuance of such notice as the jurisdiction over the Assessee was transferred to the Additional CIT, Range-I, Lucknow vide order dated 1.8.2001 passed under section 120 of the Act by the CCIT, Lucknow. Therefore, it cannot be situation where two Assessing Officer would have simultaneous jurisdiction over the assessee, one being Additional CIT, Range-I, Lucknow and other being ACIT, Range-IV, Lucknow. In these backgrounds, the Tribunal has rightly held that the issuance of notice under section 148(1) of the Act by the ACIT, Range-IV, Lucknow was without jurisdiction."

(iii)Pr.Commisioner of Income Tax-II Lucknow v. Mohd. Rizwan Prop. M/s.M.R.Garments Moulviganj [ITA No.100 of 2015 dated 30.03.2017], in which, it was held as under:

"*34.Section 148 clearly talks of issue of notice by A.O. Meaning thereby, A.O. having jurisdiction over Assessee. In fact, it is his satisfaction which is to be recorded for justifying reopening of assessment / reassessment proceedings as contemplated under section 147 and recording of reasons for the same purpose is mandatory. The satisfaction*

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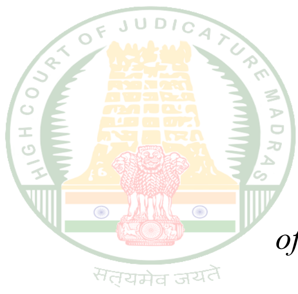
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of A.O. could not have been hired or be delegated to any other authority."

"43.The reason for issuance of notice by Competent A.O. is quite obvious inasmuch as such notice could have been issued only when concerned A.O. has reason to believe that some income has escaped assessment and recomputation / reassessment is needed. Now such satisfaction can be of that A.O. only who has jurisdiction in the matter and not of any third party.

44.We, therefore, hold that in the present case, no valid notice under section 148 was issued by Jurisdictional A.O before making assessment / reassessment and, therefore, proceedings of reassessment pursuant to notice issued under section 148 by an incompetent officer are void and ab initio."

(iv)Pankajbhai Jaysukhlal Shah v. Assistant Commissioner of Income-tax Circle 2 [(2019)110 taxmann.com.51 (Gujarat), which was affirmed by the Hon'ble Supreme Court in ***Assistant Commissioner of Income-tax Circle-2 v. Pankajbhai Jaysukhlal Shah [(2020) 120 taxmann.com 318 (SC)]*** and the ratio laid down therein is as follows:

"10.....while the reasons for reopening the assessment have been recorded by the jurisdictional Assessing Officer viz., the Deputy Commissioner of Income Tax, Circle-2, Jamnagar, the impugned notice under section 148(1) of the Act has been issued by the Income Tax Officer, Ward 2(2), Jamnagar who had no jurisdiction over the petitioner and hence, such notice was bad on the count of having been issued by an officer who had not authority in law to issue such notice. As a necessary corollary it follows that no proceedings could have been taken under section 147 of the Act in pursuance of such invalid notice. In the aforesaid premises, the impugned notice under section 148(1) of the Act as well as all the proceedings taken pursuant thereto cannot be sustained."

The legal proposition laid down in the aforesaid decisions is that "notice under section 148 is mandatory to reopen/ reassess the income of the assessee and

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such a notice should have been issued by the competent assessing officer, who has jurisdiction"; "The jurisdictional Assessing Officer, who records the reasons for reopening the assessment as contemplated under sub section (2) of section 148, has to issue notice under section 148(1), then only, such a notice issued under section 148(1) would be a valid notice"; "The officer recording the reasons under section 148(2) of the Act and the officer issuing notice under section 148(1) has to be the same person"; "Section 129 is applicable when in the same jurisdiction, there is a change of incumbent and one assessing officer is succeeded by another"; and "when once the initiation of reassessment proceedings is held to be invalid, whatever follows thereafter must also, necessarily be invalid".

14. Applying the provisions of law as well as the legal proposition laid down in the aforesaid decisions to the facts of the present case, wherein, admittedly, the appellant is an assessee on the file of the second respondent and hence, the first respondent has no jurisdiction over the appellant to issue notice under section 148 for reopening the assessment for the relevant assessment year, after recording the reasons to believe that some of the income of the appellant has escaped assessment, this court is of the opinion that the notice dated 28.03.2018 issued by the first respondent under section 148 of the

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Act, without jurisdiction, lacks legal sanctity and hence, the same is held to be invalid. As a sequitur, the continuation of the reassessment proceedings by the second respondent, who is the jurisdictional assessing officer, without issuing any fresh notice as contemplated under section 148, but issuing notice dated 14.12.2018 under section 143(2) r/w 129 of the Act, which applies only for change in incumbent within the same jurisdiction, is also held to be invalid.

15. Pertinently, it is to be pointed out at this stage that "*if an order is passed by a judicial or quasi-judicial authority having no jurisdiction, it is an obligation of Appellate Court to rectify the error and set aside the order passed by the authority or forum having no jurisdiction*" [Refer: ***State of Gujarat v. Rajesh Kumar Chimanlal Barot and another, AIR 1996 SC 2664***]. Therefore, the notice issued by the first respondent under section 148 as well as the consequential notice issued by the second respondent under section 143(2) r/w 129, cannot be allowed to be sustained. However, the learned Judge erred in directing the second respondent to continue the reassessment proceedings and granting liberty to the appellant to file objections and avail the opportunity of personal hearing to be provided, by the order impugned herein, which is liable to be set aside, in the considered view of this court.

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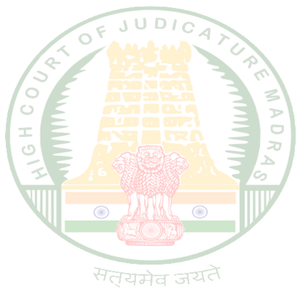

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16. As already held by this court, the first respondent, who recorded the reasons for reopening the assessment under section 148(2), has no jurisdiction over the appellant, to issue notice dated 28.03.2018 under section 148(1). Though the files pertaining to the reassessment proceedings of the appellant were transferred, the second respondent has no authority to continue the reassessment proceedings under section 129 and hence, the notice dated 14.12.2018 issued by him is also held to be invalid. The invalid notices so issued by the respondents vitiate the entire reassessment proceedings initiated against the appellant. Admittedly, no notice under section 148 was issued by the second respondent, who is the jurisdictional assessing officer, for reassessment of the return of income of the appellant, within the time frame stipulated under the Act. In this case, the limitation period of six years for reopening the assessment for the year 2011-12 under section 147 of the Act, came to an end on 31.03.2018. In such circumstances, there is no requirement for this court to go into the other issue based on the factual matrix projected by the appellant i.e., whether the appellant has disclosed fully and truly all the material particulars that are necessary for assessment for the relevant assessment year.

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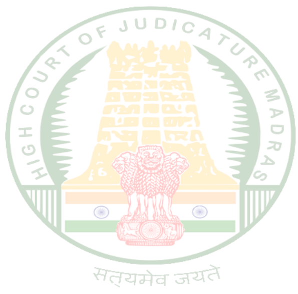

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17. In the ultimate analysis, the writ appeal stands allowed by setting aside the notices impugned in the writ petition and the order impugned herein. No costs. Consequently connected miscellaneous petition is closed.

(R.M.D., J.) **(J.S.N.P., J.)**

27.06.2022

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Internet : Yes
Index : Yes

To

1. Assistant Commissioner of Income Tax-23(2), Mumbai
   104, 1st Floor, Matru Mandir
   Tardeo Road, Mumbai - 07

2. Assistant Commissioner of Income Tax
   Corporate Circle - 4 (2), Chennai
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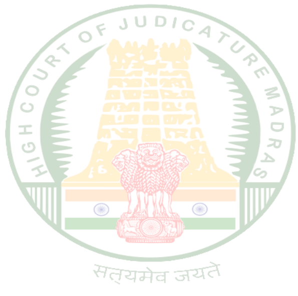

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R. MAHADEVAN, J.
and
J.SATHYA NARAYANA PRASAD, J.

rsh/rk

WA No. 2493 of 2021

27.06.2022