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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	04.11.2025
Pronounced On	27.01.2026

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.14256 of 2024
and
W.M.P.Nos.15452, 15453 & 15454 of 2024

Dr. Arvind Kumar R Shaw ... Petitioner

Vs.

1. Union of India,
   Represented by its Secretary
   Ministry of Finance
   Department of Revenue
   Room No.46, North Block
   New Delhi – 110 001.

2. The Commissioner of Income Tax (Appeals),
   Office of the Commissioner of Income Tax, Appeal
   CIT (Appeals), Chennai – 600 020.

3. The Assistant Commissioner of Income Tax
   Central Circle 1,
   Coimbatore.

4. The Tax Recovery Officer (Central)
   Income Tax Department
   Office of Tax Recovery Central
   Room No.320, 3rd Floor,
   Central Revenue Building,
   Queens Road, Bangalore – 560 001. ... Respondents

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Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, calling for the records in connection with the impugned orders in No.ITBA/APL/S/250/2023-24/1062144854(1) passed by the Respondent No.2 dated 07.03.2024 and Respondent No.3 dated 29.12.2021 and quash the same and consequently direct the Respondent No.4 to deliver the subject car to the petitioner.

For Petitioner : Mr.Ravikumar Paul
Senior Counsel
For M/s Paul and Paul

For Respondents : Mr.A.P.Srinivas
Senior Standing Counsel and
Mr.A.N.R.Jayaprathap
Junior Standing Counsel

ORDER

In this Writ Petition, the petitioner has challenged the Order dated 07.03.2024 passed under Section 250 of the Income Tax Act, 1961, whereby the appeal filed against the impugned Assessment Order dated 29.12.2021 passed under Section 143(3) read with Section 153C of the Income Tax Act, 1961 by the 3rd respondent has been dismissed by the 2nd respondent.

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2. Earlier, the 3rd respondent had passed an Assessment Order dated 29.12.2021 for the Assessment Year 2018-2019, whereby the total taxable income of the petitioner was computed at Rs.37,48,915 for the Assessment Year 2018-2019.

3. While passing the impugned Assessment Order dated 29.12.2021, the 3rd respondent concluded that there has been a sale of Rolls Royce Car bearing Registration No. DL-3C-AY-4199 and that petitioner had received a sum of Rs.2,44,00,000 as sale consideration on 29.09.2017. Further, it has been held that since the car was purchased on 14.03.2015 for a sum of Rs.1,45,00,000/- and sold for a sum of Rs.2,44,00,000/- on 29.09.2017, it was held to be a short-term capital asset.

4. Relevant portion of the impugned Assessment Order dated 29.12.2021 is extracted hereunder:-

> *" 8. ... As seen from the information and evidences, the assessee had handed over the vehicle with signed documents on 29/09/2017 and the money was received by the assessee's authorized person on 29/09/2017. The assessee had been waiting till 23/10/2017 to file a complaint to the police and the complaint was made only on 21/11/2017. The incidence of complaining to the*

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police had happened long after the search conducted by the Income-tax Department on 12/10/2017. This leads to a presumption that filing a complaint to the police is an afterthought. Considering all the above facts, it is concluded that there has been a sale and the assessee has received the consideration of Rs.2,44,00,000/- towards the sale of Rolls Royce car sold by the assessee. The assessee had purchased the car on 14/03/2015 for Rs.1,45,00,000/- and has sold the same on 29/09/2017 for Rs.2,44,00,000/-. Since it has been sold within a period of three years, the same is Short Term Capital Asset.

9. The assessee's representative submitted that there had not been any sale of the said car. He also submitted that the car was under personal use only and is not used for business. Therefore, if the department does not accept the explanations offered by the assessee, the movable asset being the car for personal use is not a capital asset as provided in section 2(14) of the Income-tax Act and that there will not arise any capital gain on the same. The assessee's contention is accepted."

5. The 3rd respondent rejected the explanation offered by the petitioner that the car being a movable asset used for personal use was not a capital asset as defined in Section 2(14) of the Income Tax Act, 1961 and does not attract the capital gains tax at the hands of the Petitioner.

6. The specific case of the petitioner is that petitioner wanted to dispose the aforesaid Rolls Royce Car and that a broker by name Karthikeyan, who is one of the directors of Sree Annapoorna Sree Gowrishankar Hotels Private Limited in Coimbatore, acting as a selling agent, approached the petitioner that

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one Sekar, belonging to LULU Group Cochin intended to by the car and therefore, the car was to be sold for a sum of Rs.80,00,000/-.

7. The further case of the petitioner is that since there was a wedding in the family of LULU Group of Directors and the car was required for the aforesaid function as well, in a bona fide belief that the payment would be made to the petitioner, the car was handed over to the said Karthikeyan and that the delivery note was handed over together with duplicate keys, original R.C, insurance copy etc to the said person. However, one of the duplicate keys was still retained by the petitioner, as the payment was still expected.

8. It is submitted by the learned counsel for the Petitioner that after the car delivery was taken on 29.09.2017, the said agent namely Mr. Karthikeyan was untraceable. It is further submitted that on 16.10.2017, the petitioner was informed by the said Karthikeyan that the payment for sale of car will be made on the subsequent day to the petitioner.

9. According to the petitioner, since there was no information from the said Karthikeyan, the petitioner lodged a police compliant on 21.11.2017 before B-2, R.S.Puram Police Station, Coimbatore for theft of the aforesaid Rolls Royce Car.

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10. Meanwhile, it appears that there was a search conducted in the premises of one Sukesh Chandrasekar on 12.10.2017 at Bangalore and thereafter, on 17.10.2017 at Coimbatore and on 09.11.2017 at Kochi. The car was seized by the Income Tax Authorities from a Service Centre namely Auto Tree Service Centre at Kochi. Thereafter, the petitioner was issued summon on 29.01.2018 by the Assistant Director of Income Tax (Investigation) under Section 131(1A) of Income Tax Act, 1961 for inspection. The petitioner had also appeared and given his statement on 26.02.2018 vide a representation dated 26.02.2018.

11. Meanwhile, the Inspector of Police, RS Puram Police Station filed an application under Section 91 Cr.P.C., for production of the Car, before the Judicial Magistrate-1, Coimbatore in Crl.M.P.No.1945/2018 in Cr.No.1259/2017. The Learned Judicial Magistrate-1, Coimbatore vide order dated 27.06.2018 passed an order for production of the car before the Court.

12. As against the said order, the Assistant Director of Income Tax (Investigation), preferred Crl.O.P.No.18309/2018 before this Court. By Order dated 20.07.2018, this Court allowed the said Criminal Original Petition and thereby set aside the Order dated 27.06.2018 of the Learned Judicial

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Magistrate-1, Coimbatore, with a liberty to the petitioner to work out his remedy before the Income Tax Authorities.

13. It is in this background, the petitioner sent a representation dated 21.08.2018 to the Director General of Income Tax (Investigation), Bangalore, with a request for release the said Car from their custody. Meanwhile, a proceeding came to be initiated and a Notice under Section 153C came to be issued on 25.11.2021, which has now culminated in the impugned Assessment Order dated 29.12.2021 under Section 143(3) read with Section 153C of the Income Tax Act, 1961. Since the petitioner was aggrieved by the impugned Assessment Order dated 29.12.2021 passed by the 3rd respondent, the petitioner filed an appeal before the 2nd respondent, who dismissed the appeal by the impugned Order dated 07.03.2024.

14. After the Assessment Order was passed on 29.12.2021 by the 3rd respondent, the 4th respondent issued a Notice dated 21.04.2022 under Rule 83 of the Second Schedule to the Income Tax Act, 1961, alleging that a sum of Rs.2.44 Crores was handed over to the petitioner's son by one Balaji who was sent by the father of Sukesh Chandrashekaran who is alleged to be the purchaser of the Car who had a pre-existing tax liability of Rs.217.63 Crores to the Income Tax Department.

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15. Although, the petitioner has an appeal remedy before the Tribunal against the impugned Order dated 07.03.2024 of the 2nd Respondent/Appellate Authority, the petitioner is before this Court to quash the impugned assessment order and appeal rejection order on the ground that there is no revenue implication by virtue of the impugned Assessment Order dated 29.12.2021 passed by the 3rd respondent. The present writ petition was presented on 16.04.2024, immediately after the impugned Order dated 07.03.2024 was passed by the 2nd respondent.

16. It is submitted by the learned counsel for the petitioner that respondent has erroneously concluded that there was a sale of the car, merely because the petitioner had handed over the delivery note along with R.C., and Insurance Copy to the said intermediary namely Karthikeyan.

17. It is further submitted by the learned Senior Counsel for the petitioner that the petitioner is still in possession of the duplicate key and that no transfer has been effected till date and therefore, seizure of the car for the tax arrears of the said Mr. Sukesh Chandrashekaran cannot justified.

18. The learned Junior Standing Counsel for R2 to R4, on the other hand,

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would submit that the Writ Petition is devoid of merits. It is further submitted that petitioner has an alternative remedy by way of an appeal before the Appellate Tribunal under Section 253 of the Income Tax Act, 1961.

19. I have considered the arguments advanced by the learned counsel for the petitioner and learned Junior Standing Counsel for R2 to R4.

20. The only point for consideration is whether by mere delivery of the possession of car along with its documents constitutes a sale without an endorsement of transfer of registration in the name of the buyer and whether indeed any cash was received by the petitioner on account of the purported sale on 29.09.2017, on the basis which the 3rd respondent assessed the short term capital gain in the hands of the petitioner.

21. The expression “sale” has not been defined under the provisions of the Income Tax Act, 1961.

22. Section 4 of the Income Tax Act, 1961 is the charging Section under the provisions of the Income Tax Act, 1961. As per Section 4 of the Income Tax Act, 1961, income is chargeable at the rate prescribed in accordance with and subject to the provisions of the Act.

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23. Section 4 of the Income Tax Act, 1961 are reproduced below:

*"**4. Charge of income-tax**.—(1) Where any Central Act enacts that income-tax shall be charged for any assessment year at any rate or rates, income-tax at that rate or those rates shall be charged for that year in accordance with, and [subject to the provisions (including provisions for the levy of additional income-tax) of, this Act] in respect of the total income of the previous year of every person:*

Provided that where by virtue of any provision of this Act income-tax is to be charged in respect of the income of a period other than the previous year, income-tax shall be charged accordingly.

(2) In respect of income chargeable under sub-section (1), income-tax shall be deducted at the source or paid in advance, where it is so deductible or payable under any provision of this Act."

24. Section 5 deals with the scope of total income, which reads as under:

*"**5. Scope of total income**.—(1) Subject to the provisions of this Act, the total income of any previous year of a person who is a resident includes all income from whatever source derived which—*

(a) is received or is deemed to be received in India in such year by or on behalf of such person; or

(b) accrues or arises or is deemed to accrue or arise to him in India during such year; or

(c) accrues or arises to him outside India during such year:

Provided that, in the case of a person not ordinarily resident in India within the meaning of sub-section (6) of section 6, the income which accrues or arises to him outside India shall not be so

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included unless it is derived from a business controlled in or a profession set up in India."

25. However, the expression "transfer" has been defined in Section 2(47) of the Income Tax Act, 1961. It includes 'sale'. The said definition reads as under:-

"(47) "transfer", in relation to a capital asset, includes,—
(i) the sale, exchange or relinquishment of the asset; or
(ii) the extinguishment of any rights therein; or
(iii) the compulsory acquisition thereof under any law; or
(iv) in a case where the asset is converted by the owner thereof into, or is treated by him as, stock-in-trade of a business carried on by him, such conversion or treatment;] [or]
(iva) the maturity or redemption of a zero coupon bond; or]
(v) any transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882 (4 of 1882); or
(vi) any transaction (whether by way of becoming a member of, or acquiring shares in, a co-operative society, company or other association of persons or by way of any agreement or any arrangement or in any other manner whatsoever) which has the effect of transferring, or enabling the enjoyment of, any immovable property."

26. As per Section 2(14) of the Income Tax Act, 1961, defines the term "capital asset", which reads as under:-

(14) ["capital asset" means—
(a) property of any kind held by an assessee, whether or not connected with his business or profession;
(b) any securities held by a Foreign Institutional Investor

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which has invested in such securities in accordance with the regulations made under the Securities and Exchange Board of India Act, 1992 (15 of 1992),

but does not include—

(i) any stock-in-trade [other than the securities referred to in sub-clause (b)]], consumable stores or raw materials held for the purposes of his business or profession;

(ii) personal effects, that is to say, movable property (including wearing apparel and furniture) held for personal use by the assessee or any member of his family dependant on him, but excludes—

(a) jewellery;
(b) archaeological collections;
(c) drawings;
(d) paintings;
(e) sculptures; or
(f) any work of art

27. As per Section 2(42B) of the Income Tax Act, 1961, short-term capital gain means the capital gain arising from the transfer of a "short-term capital asset".

28. The expression 'transfer' as defined in Section 2(47) of the Income Tax Act 1961 makes it clear that the expression 'transfer' includes sale, exchange or relinguishment of the asset or extinguishment of any rights therein.

29. As per Section 4 of the Sale of Goods Act, 1930, a contract of sale of goods is a contract, whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. A contract of sale may be absolute or

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conditional. Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale. However, where the transfer of the property in the goods is used to take place at a future time or subject to some conditions thereafter to be fulfilled, the contract is called an agreement to sell. The agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

30. Section 4 of the Sale of Goods Act, 1930 is reproduced below:

> *"(1) a contract of sale of goods is a contract, whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. There may be a contract of sale between one part-owner and another.*
>
> *(2) A contract of sale may be absolute or conditional.*
>
> *(3) Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.*
>
> *(4) An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred."*

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31. Thus, it is evident that on 29.09.2017, when the petitioner handed over the possession of the Car together with the original documents, the sale of the car was concluded by the Petitioner.

32. As per Section 32 of the Sale of Goods Act 1930, unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions, that is to say, the seller shall be ready and willing to give possession of this goods to the buyer in exchange for the price, and the buyer shall be ready and willing to pay the price in exchange for possession of the goods.

33. In T.Commr Vs. R.C.Gupta & Co., AIR 1968 Cal 385, the Hon'ble Supreme Court while dealing with the symbolic delivery under Section 32 of the Sale of Goods Act 1930 held that a symbolic delivery of goods divesting the seller's possession from the said goods is sufficient compliance with Section 32 of the Sale of Goods Act, 1930. Therefore, applying the aforesaid ratio to the facts of the present case, it has to be *prima facie* held that the sale of the vehicle was complete.

34. Thus, as per Section 32 of the Sale of Goods Act 1930, the delivery of the Car by the petitioner on 29.09.2017 to one Karthikeyan was not sent on

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approval or "on sale or return" as contemplated under Section 24 of the Act. Only where such situation takes place, Section 24 of the Sale of Goods Act 1930 is attracted. Therefore, *prima facie* it can be said that the sale of car had indeed taken place.

35. The petitioner should have filed a suit before the competent civil court for recovering the amount as an unpaid seller in terms of Section 45 of the Sale of Goods Act, 1930 against the said Karthikeyan to whom the Car was handed over either as a principal or as an agent of an undisclosed principal as defined in Section 231 of the Contracts Act, 1872.

36. Even as per the provisions of the Motor Vehicles Act, 1988 and the Rules made thereunder, it can be said that there was a transfer of ownership. The petitioner should have followed the mandatory requirement of Section 50 of the Motor Vehicles Act, 1988 and Section 55 of Central Motor Vehicles Rules, 1989.

37. Failure to follow the above requirement will not lead to an inference that there was no sale of vehicle. Therefore, it was not open to the petitioner to contend that the vehicle had not been sold to the said Sukesh Chandrashekaran as an undisclosed principal through a common agent, namely Karthikeyan, as

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documents were handed over to the said Karthikeyan on 29.09.2017.

38. Merely because petitioner still retains the duplicate keys is not a relevant criteria to conclude that there was no sale on 29.09.2017. At best, retention of the duplicate / spare key of the vehicle was a mere lien.

39. That apart, an expensive vehicle admittedly was handed over to the said Agent on 29.09.2017. However, the complaint was filed only on 21.11.2017 i.e. after the said Sukesh Chandrashekaran's premises were searched under Section 132 of the Act on 12.10.2017 at Bangalore and thereafter, on 17.10.2017 at Coimbatore and on 09.11.2017 at Kochi. The complaint was filed before the Coimbatore Police Station on 21.11.2017 after the Car was seized from the aforesaid service centre on 09.11.2017.

40. Therefore, there is no case to interfere with the impugned orders passed by the Appellate Commissioner / 2nd respondent or by the Assessing Officer / 3rd Respondent. That apart, there are several disputed questions of facts which cannot disected and decided in this writ petition. Therefore, this writ petition is liable to be dismissed.

41. Since the car has been in the custody of the Income Tax Department

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since the year 2017, the department is directed to auction the same and deposit the amount in an escrow account, which is to be appropriated or released to the petitioner subject to the final outcome of the proposed appeal to be filed by the petitioner before the Appellate Tribunal.

42. However, a liberty can be granted to the petitioner to work out the remedy before the Appellate Tribunal against the impugned order passed by the 2nd Respondent, provided such appeal is filed within a period of 30 days from the date of receipt of a copy of this order.

43. Since liberty is given to the petitioner to file an appeal before the Appellate Tribunal, the appeal shall be disposed by the Appellate Tribunal uninfluenced by the observation in this order towards the merits of the case.

44. In view thereof, this Writ Petition is dismissed with the above liberty. Registry is directed to return the certified copy of the impugned order to the petitioner. Connected miscellaneous petitions are closed. No costs.

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To

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C.SARAVANAN, J.

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Pre-Delivery Order in
W.P.No.14256 of 2024

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