



W.P.Nos.8944 of 2022 etc.batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	19.07.2023
Pronounced On	03.01.2024

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.Nos.8944, 8948 and 19122 of 2022

and

W.M.P.Nos.8774, 8776, 8778, 8779, 18422 and 18424 of 2022

In all W.Ps.

Vijaykumar Poornima

... Petitioner

Versus

1.The Additional/Joint/Deputy/
Assistant Commissioner of Income Tax,
National Faceless Assessment Centre,
Delhi.

2.The Income Tax Officer
Non Corp.Ward 3 (1) CHE
Wanaparthi Block,
No.121, Mahatma Gandhi Road,
Nungambakkam,
Chennai.

... Respondents

Prayer in W.P.No.8944 of 2022:Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, call for the records of the impugned assessment order passed by the first respondent in ITBA/AST/S/147/2021-22/10420729192(1) dated 30.03.2022 for the AY 2014-15.



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Prayer in W.P.No.8944 of 2022: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, call for the records of the impugned assessment order passed by the first respondent in ITBA/AST/S/147/2021-22/10422119358(1) dated 30.03.2022 for the AY 2015-16.

Prayer in W.P.No.19122 of 2022: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, call for the records of the impugned penalty notice under Section 221(1) in ITBA/RCV/S/221/2022-23/1043719830(1) dated 04.07.2022, from the files of the Second Respondent.

In all WPs.

For Petitioner : M/s.Aparna Nandhakumar

For Respondents : Mr.V.Mahalingam

Senior Standing Counsel

COMMON ORDER

By this common order all the three writ petitions are being disposed of.

2. In these writ petitions, the petitioner has challenged two Assessment orders both dated 30.03.2022 passed by the first respondent for the assessment years 2014-15 and 2015-16 respectively under Section 147 read with section 144B of the Income Tax Act, 1961 and a common notice issued under Section 221 (1) of the Income Tax Act, 1961 seeking to impose penalty pursuant to the above mentioned impugned assessment or-



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orders dated 30.03.2022 passed by the first respondent for assessment years 2014-15 and 2015-16 respectively and assessment year 2008-2009.

3. The challenge to the impugned orders dated 30.03.2022 under Section 147 read with section 144B and the impugned notice dated 04.07.2022 under Section 221 (1) of the Income Tax Act, 1961 are on account of violation of principles of natural justice.

4. Assessments under Section 143(1) of the Income Tax Act, 1961 for these two assessment years 2014-15 and 2015-16 were completed on 25.03.2016 and 28.06.2017 earlier. These assessment orders were sought to be re-opened under Section 147 of the Income Tax Act, 1961 by issuing notice under Section 148 of the Income Tax Act, 1961 dated 30.03.2021 as it stood then.

5. Pursuant to the aforesaid notices under Section 148 of the Income Tax Act, 1961, the petitioner had uploaded the return of income on 29.04.2021 manually as the petitioner was unable to file them electronically.



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6. The Impugned Assessment Orders precedes Show Cause Notices dated 26.03.2022 for the Assessment Years 2014-2015 and 2015-2016. The proposal in the Show Cause Notice has been confirmed in the Impugned Assessment Orders.

7. The principle ground of attack on the Impugned Assessment Orders dated 30.03.2022 is that the mandatory requirement of Section 143(2) of the Income Tax Act, 1961 has not been complied with by the respondents and that the Impugned Assessment Order has been passed in a hurry without giving adequate opportunity to the petitioner to respond to the Show Cause Notices dated 26.03.2022 containing the Draft Assessment Orders.

8. The specific case of the petitioner is that the petitioner had filed regular returns under Section 139 of the Income Tax Act, 1961, and Assessment Orders came to be passed under Section 143(1) of the Income Tax Act, 1961 for the respective assessment years earlier as mentioned above.



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9. It is submitted that the second respondent issued notices under Section 148 of the Income Tax Act, 1961 on 30.03.2021 and proposed to re-open the assessment alleging escapement of income chargeable to tax for the aforesaid respective assessment years requiring the petitioner to file a return in the prescribed form. The petitioner responded to the same by a letter dated 19.04.2021 and called upon the second respondent to furnish the reason for reopening the assessment before proceeding to file a return as is contemplated under Section 148(1) of the Income Tax Act, 1961.

10. It is the case of the petitioner that the petitioner was not a tech savvy person and therefore, was unable to upload the return electronically and had therefore submitted a hard copy of the return of income on 29.04.2021 with a covering letter manually in reply to notices dated 30.03.2021 under Section 148 and also uploaded the same digitally at the ASK Counter of the Income Tax Department which was acknowledged in Form ITR V and further sent to the Central Processing Unit.

11. The petitioner appears to have filed a manual return which was acknowledged by the Income Tax Department on 29.04.2021.



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12. However, that the petitioner was issued with a reminder dated 23.09.2021 by the second respondent and called upon the petitioner to file a return. The second respondent has issued further notices dated 10.11.2021 under section 142(1) to furnish certain details. The petitioner has filed the income computation statement along with the schedules through e-filing in response to the said notices.

13. It appears that the return that was filed by the petitioner on 29.04.2021 has not been taken note off and therefore, two notices under Section 142(1) of the Income Tax Act, 1961 were issued on 23.12.2021 and on 21.03.2022 by the first respondent.

14. These two notices under Section 142(1) of the Income Tax Act, were issued by the first respondent, the National Faceless Assessment Centre at New Delhi. In these two notices, the petitioner was called upon to furnish further details.

15. The petitioner filed a reply dated 10.01.2022 enclosing certain documents asked for, in the first notice issued on 23.12.2021 and has also



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enclosed the details of returns filed on 29.04.2021 with the ASK Counter of the Income Tax Department duly acknowledged in Form ITR V.

16. The first respondent thereafter issued Show Cause Notices dated 26.03.2022 along with the Draft Assessment Orders under section 147 read with Section 144B of the Income Tax Act, 1961 soliciting the response of the petitioner by 28.03.2022. It is submitted that since the next day being Sunday viz., 27.03.2022 and the petitioner had difficulties therefore the petitioner could not reply earlier due to after effects of covid and was under supervision of a physician. It is submitted that the petitioner could not immediately reply and respond to the Show Cause Notices cum Draft Assessment Orders with the help of a professional before the stipulated time.

17. It is the specific case of the petitioner that under sub-section (2) to Section 143 of the Income Tax Act, the Assessing Officer or the prescribed Income Tax Authority was required to serve a notice requiring the petitioner on a date to be specified therein either to attend the office of the Assessing Officer or to produce, or cause to be produced before such offi-



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cer any evidence on which the petitioner relied upon in support of the re-

turn.

18. It is submitted that no notice under sub-section (2) to Section 143 of the Act was required to be serve only in the case after expiry of six months from the end of the financial year in which the returns was furnished as per the proviso to sub-section (2) to Section 143 of the Act. It is therefore submitted that the Impugned Assessment Order is liable to be quashed.

19. In this connection, learned counsel for the petitioner has placed reliance on the following decisions of the Hon'ble Supreme Court, Hon'ble Division bench of this Court and the learned Single Bench of this Court:-

- i. **Assistant Commissioner of Income Tax and Others vs. Hotel Blue Moon**, MANU/SC/0084/2010;
- ii. **Commissioner of Income Tax vs. Laxman Das Khandelwal**, MANU/SC/1088/2019;
- iii. **Sapthagiri Finance and Investments vs. ITO**, MANU/TN/2713/2012;
- iv. **Commissioner of Income Tax, Chennai vs. Alstom T & D India Limited, Pallavaram, Chennai**, MANU/TN/2327/2012;
- v. **Assistant CIT vs. Geno Pharmaceuticals Limited**, MANU/MH/1996/2013;
- vi. **P.T.Lee Chengalvaraya Naicker Trust vs. The Income Tax Officer, National Faceless Assessment Centre and Others**, MANU/TN/7512/2022.



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WEB COPY 20. Defending the Impugned Assessment Orders, the learned Standing Counsel for the Income Tax Department would submit that as per section 139D of the Income Tax Act, 1961, Central Government is authorized to frame rules regarding filing of the returns and it is in this context Rule 12(3)(iii) of the Income Tax Rules, 1962, has been framed.

21. It is submitted that since the petitioner failed to file the returns electronically as is required under Rule 12(3)(iii) of the Income Tax Rules, 1962, read with Section 139D of the Income Tax Act, 1961 for the purpose of Section 148 of the Income Tax Act, 1961 and the manual return which is said to have been filed by the petitioner on 29.04.2021 cannot be accepted and therefore, the question of following the procedure under Section 143(2) of the Income Tax Act, 1961, did not arise and therefore, proceedings under Section 142(1) of the Income Tax Act, 1961 was started followed by a Show Cause Notices dated 26.03.2022 and the Impugned Assessment Orders both dated 30.03.2022.

22. It is further submitted that the assessment had to be completed in a time bound manner on or before 31.03.2022 as otherwise the re-as-



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assessment proceeding initiated pursuant to notice dated 30.03.2021 issued under Section 148 of the Income Tax Act, 1961 would have lapsed.

23. The learned Senior Standing Counsel for the respondents submits that the petitioner has also not responded to the second mentioned notices dated 21.03.2022 of the first respondent issued under Section 142(1) of the Income Tax Act, 1961 and hence the first respondent was left with no other option but to complete the assessment and pass the Impugned Orders.

24. It is therefore submitted that these writ petitions be dismissed and the petitioner be relegated to workout the remedy before the Appellate Commissioner under Section 246 A of the Income Tax Act, 1961.

25. I have considered the arguments of the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondent.

26. The impugned orders passed on 30.03.2022 by the first respondent have preceded with the notices issued by the first and the second respondents and show cause notices cum Draft Assessment Orders



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dated 26.03.2022. It is evident that the assessment orders have been passed in a hurry to avoid lapsing of the assessment proceeding due to limitation under Section 153 of the Income Tax Act, 1961.

27. Although the respondents have given various reasons to justify the impugned order and submit that the petitioner should be relegated to work out the remedy before the Appellate Commissioner against the impugned assessment orders dated 30.03.2022, I am of the view that this is a manifest violation of principles of natural justice and therefore, the impugned orders are liable to be quashed as not enough time was given to the petitioner to respond to the respective show cause notices cum Draft Assessment Orders dated 26.03.2022.

28. On this short ground alone the impugned orders are liable to be quashed and the cases are to be sent back to the first respondent to pass a fresh order by giving opportunity to the petitioner to file a reply/representation to the respective show cause notices cum Draft Assessment Orders dated 26.03.2022.



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29. Since the impugned orders dated 30.03.2022 are being set aside and the cases have been remitted back, the impugned notice dated 04.07.2022 issued under Section 221(1) of the Income Tax Act, 1961 for the Assessment year 2014-2015 and Assessment year 2015-2016 are also liable to be quashed.

30. In the result W.P.No.8944 and W.P.No.8948 of 2022 are allowed by quashing both the impugned assessment orders dated 30.03.2022 for the Assessment year 2014-2015 and Assessment year 2015-2016 and the cases are remitted back to the first respondent to pass a fresh order within a period of six (6) months from the date of receipt of the copy of this order. The petitioner shall file her reply/representation to the respective show cause notices cum Draft Assessment Orders dated 26.03.2022, if any, within a period of 45 days of the receipt of copy of this order.

31. In view of the order passed in W.P.No.8944 and W.P.No.8948 of 2022 for the Assessment year 2014-2015 and Assessment year 2015-2016, impugned notice dated 04.07.2022 issued under Section 221(1) of the Income Tax Act, 1961 also stand quashed in so far as the Assessment year 2014-2015 and Assessment year 2015-2016, with a liberty to issue a



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fresh notice to the petitioner subject to the outcome of the remand proceedings as ordered above.

32. In so far as impugned notice dated 04.07.2022 for the Assessment year 2008-2009 is concerned issued under Section 221(1) of the Income Tax Act, 1961, the first respondent is directed to consider representation dated 03.11.2016 and 14.07.2022 of the petitioner and pass order within a period period of six (6) months from the date of receipt of the copy of this order. Consequently W.P.No.19122 of 2022 stands allowed in so far as Assessment year 2014-15 and Assessment Year 2015-16 and stand disposed in so far as Assessment Year 2008-09. There shall be no order as to costs. Connected writ miscellaneous petitions are closed.

03.01.2024

Index : Yes/No
Speaking Order : Yes/No
Neutral Citations : Yes/No
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To:

1.The Additional/Joint/Deputy/
Assistant Commissioner of Income Tax,
National Faceless Assessment Centre,
Delhi.

2.The Income Tax Officer
Non Corp.Ward 3 (1) CHE
Wanaparthi Block,
No.121, Mahatma Gandhi Road,
Nungambakkam,
Chennai

C.SARAVANAN, J.

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Pre-Delivery Common Order made
in
W.P.Nos.8944, 8948 and 19122 of 2022

03.01.2024