IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 19.3.2015

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.7718 of 2015

A.Kaliyaperumal ...Petitioner

Vs.

1. The Chairman
Central Board of Direct Taxes
South Block, New Delhi

2. The Director of Income Tax
Office of the Director of Income Tax
(International Taxation) VII Floor Annexe
Building 121 Nungambakkam High Road
Chennai-34.

3 The Income Tax Officer (OSD)
Tax Recovery Officer International Taxation
VII Floor Annexe Building,
121 Nungambakkam High Road Chennai-34.

4 The Tax Recovery Officer
Income Tax Office Thanjavur. ... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of certiorari calling for the records of the Second Respondent relating to the proceedings bearing No. DIT/IT/CHE/115/273A/2014-15 dated 11.09.2014 and the demand notice bearing TRC-2/2014-15/INTL. TXN dated 10.09.2014 issued by the 3rd respondent under Sec.156 of the Income Tax Act 1961 and quash the same.

For Petitioner :Mr.S.Udayakumar

For Respondents :Mr. Pramod Kumar Chopda

O R D E R

The petitioner has come forward with the above writ petition to quash the proceedings dated 11.9.2014 and the demand notice dated 10.9.2014 passed by the respondents.

2. The petitioner is a non-resident Indian working in Singapore. The petitioner was directed to file income tax return for the year 1995-96. He filed return declaring nil income. On receipt of the return filed by the petitioner, the respondents directed him to explain the investment towards purchase of property in Mannargudi. The petitioner also explained the same. According to the petitioner, the property was purchased by him out of sale proceeds of gold brought under NRI scheme. Notwithstanding the said explanation, the authorities had levied tax by proceedings dated 28.10.2002. Aggrieved against the said order, the petitioner preferred an appeal along with condone delay petition, however, the same was dismissed on account of delay but not on merits. Thereafter, the petitioner appears to have made a representation dated 05.6.2010 to the authority. Since the same was not considered, the petitioner filed a writ petition in WP.No.21021 of 2010. This Court, by order dated 24.09.2010, directed the petitioner to make fresh application for waiver. Pursuant to the same, the petitioner made a representation dated 28.12.2011. Since the same was also not considered, the petitioner filed another writ petition in WP.No.7319 of 2012 and this Court, by order dated 27.3.2012 directed the respondents therein to consider and dispose of the representation dated 25.12.2010 and 28.12.2011. Without considering the request made by the petitioner, the respondents have passed the impugned order. Therefore, the petitioner is before this Court.

3. The learned counsel for the petitioner submitted that inspite of repeated request made by the petitioner before the second respondent to waive interest, fine and penalty, the respondents have passed the impugned order that too, without considering the representations made by the petitioner and without giving an opportunity of personal hearing to him. Therefore, the impugned order is per se illegal and non est in the eye of law.

4. Per contra, the learned counsel appearing for the respondents submitted that sufficient opportunity has been given to the petitioner to pay interest, fine and penalty apart from the tax amount, which is due from 1994 - 1995. But, the petitioner failed to avail the opportunity given by the authority. The learned counsel further submitted that after considering the case of the petitioner as per the direction of this Court, the impugned order has been passed and, therefore, no indulgence should be shown to the petitioner. Thus, the learned counsel prays for dismissal of the writ petition.

5. I have heard the submission made by the learned counsel for the petitioner and the learned counsel for the respondents and perused the materials available on record.

6. Though there is some force in the contention of the learned counsel for the respondent, in the interest of justice, there

will be no harm in giving one more opportunity to the petitioner. Admittedly, the petitioner failed to take effective steps to avail the opportunity given to him. Therefore, I am inclined to remit the matter to the authority for fresh consideration provided the petitioner deposits entire tax amount demanded by the authority. Accordingly, the impugned order is set aside and the matter is remitted to the Authority concerned for fresh consideration. The petitioner is directed to appear before the authority concerned on 01.5.2015 along with objections and documents, if any, without waiting for any fresh notice from the respondents and on such appearance, the authority concerned shall consider the objections raised and the documents to be produced by the petitioner and pass fresh orders in accordance with law. The petitioner shall deposits the entire tax amount demanded before the authority concerned on or before 30.4.2015.

7. In case the petitioner fails to avail the opportunity on 01.5.2015 and failed to deposit the amount as stated above, the impugned order shall stands restored.

8. Accordingly, the Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar(LA)
Dt:26/3/2015

True Copy

Sub-Assistant Registrar

To

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Income Tax Office Thanjavur.

+ 1 cc to Mr.T.Pramod Kumar Chopda, Advocate SR 16174

+ 1 cc to Mr.S.Udayakumar, Advocate SR 15831

ctk(co)
prk26/3

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