



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.1.2016

Coram

The Honourable Mr.Justice M.JAICHANDREN

and

The Honourable Mrs.Justice S.VIMALA

W.A.No.50 of 2015

Mrs.Vasudeva Priya ... Appellant/Petitioner
-vs-

1. Joint Commissioner of Income Tax
Business Range XV
Aayakar Bhawan
121 MG Road
Chennai - 600 034

2. The Income Tax Officer
Business Ward XV (2) (i/c)
VI Floor, New Block, Aayakar Bhawan
121 MG Road
Chennai - 600 034 ... Respondents/Respondents

Writ Appeal against the order dated 8.12.2014 in
W.P.No.10302 of 2014 on the file of this Court.

For appellant : Mr.Suhrith Parthasarathy

For respondents: Mr.T.Pramodkumar Chopda

J U D G M E N T

(The Judgment of the Court was made by
M.JAICHANDREN,J.)

This writ appeal has been filed challenging the order of the
learned single Judge, dated 8.12.2014 in W.P.No.10302 of 2014.

Writ Petition filed U/A 226 of the Constitution of India
Praying to issue a Writ of Certiorified Mandamus to call for the
records of the 2nd respondent contained in its Assessment Order
dt 25.3.2014 passed under Section 144 read with Section 147 of



the Income Tax Act 1961 in PAN No. AGCPP4235A for the assessment year 2006-07 adding a sum of Rs.6 21 104/- to the petitioner total income along with the Corrigendum to the same bearing number SCRT-51/ITO/BW XV (2)/13-14 dt 27.3.2014 and to quash the same as violating the petitioner fundamental and constitutional rights and consequently to direct the 2nd respondent or any of its subordinates agents or any other person claiming under the 2nd respondent to drop any proceedings initiated under Section 271 (1) (c) of the Income Tax Act 1961.

2. From the contentions raised by the learned counsel appearing for the appellant and on a perusal of the order passed by the learned single Judge, dated 8.12.2014 made in W.P.No.10302 of 2014, it could be noted that the learned single Judge had dismissed the writ petition holding that this Court was not inclined to exercise its jurisdiction under Article 226 of the Constitution of India to examine the disputed question of fact relating to the service of notice on the appellant under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'). It has been noted by the learned single Judge that the appellant had stated that to the best of her knowledge and belief, she had not been served with any notice. It had been held that the the said submission made by the appellant cannot be considered as a categorical stand, especially, when the question of limitation is pivotal issue in the matter.

3. It is the categorical statement of the learned counsel appearing for the respondent Department that notice under Section 148 of the Act had been issued to the appellant. However, it had been returned unserved. Thereafter, the appellant had been contacted over phone and had been informed about the contents of the notice. Thereafter, a summon under Section 131 of the Act had been issued, on 7.3.2013. In response to the same, the petitioner's Chartered Accountant had appeared before the authorities concerned, on 13.3.2013 and had requested for time to file the details of the claim made under Section 54F of the Act. On 15.3.2013, the appellant had filed a reply, dated 14.3.2013. A copy of the notice under Section 148 of the Act had been given to the bearer of the letter sent on behalf of the appellant. Subsequently, on 30.7.2013, the appellant had filed her return of income for the assessment year 2013-14. On 18.10.2013, a letter had been issued to the appellant calling for the details pursuant to the notice issued under Section 148 of the Act and it had been sent through email to the Chartered Accountant representing the appellant. On 24.10.2013, the appellant had submitted a letter, dated 22.10.2013, requesting to know the reasons for reopening of the assessment. The reasons for reopening of the assessment had been issued to the appellant, on 28.1.2014.



4. In view of the rival contentions raised on behalf of the appellant as well as the respondents with regard to the service of the notice under Section 148 of the Act, the learned single Judge had rightly held that such disputed question of fact cannot be gone into by the High Court invoking its jurisdiction under Article 226 of the Constitution of India. In such circumstances, the learned single Judge had dismissed the writ petition giving liberty to the appellant to file an appeal against the impugned assessment order before the appellate authority concerned within a period of 30 days from the date of receipt of a copy of the said order and it had also been stated that if such an appeal is filed, the appellate authority was to consider the same on merits and in accordance with law the provisions of the Act and to pass appropriate orders thereon.

5. In view of the facts and circumstances of the case and as the rival contentions had been raised relating to the factum of the service of notice on the appellant under Section 148 of the Act, we are of the considered view that the appellant has not shown sufficient cause or reason for this Court to set aside the impugned order of the learned single Judge, dated 8.12.2014 made in W.P.No.10302 of 2014. Hence, we are inclined to dismiss the writ appeal. However, it would be open to the appellant to file an appeal before the appellate authority concerned challenging the assessment order, dated 25.3.2014, passed by the second respondent herein, within a period of 30 days from the date of receipt of a copy of this order raising all the issues available to the parties concerned in the said appeal. We also make it clear that we are not expressed any opinion on the merits of the matter. The writ appeal stands dismissed with the above observations. No costs. Connected M.P.No.1 of 2015 is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To:

1. The Joint Commissioner of Income Tax
Business Range XV
Aayakar Bhawan
121 MG Road
Chennai - 600 034



2. The Income Tax Officer
Business Ward XV (2) (i/c)
VI Floor, New Block, Aayakar Bhawan
121 MG Road
Chennai - 600 034

WEB COPY

+lcc to Mr.Suhrith Parthasarathy, Advocate, S.R.No.3393
+lcc to Mr.T.Pramodkumar Chopda, Advocate, S.R.No.3440

W.A.No.50 of 2015

sld(CO)
srg(26/02/2016)