

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.01.2017

Coram

THE HONOURABLE MR. JUSTICE RAJIV SHAKDHER

W.P.No.958 of 2017
and WMP No.956 of 2017

Shri.Lakshmanan Magendiran,
Prop : TVL. ABE TEX.,
No.144/A, R.K.Complex,
College Road, Near Ayyappan Temple,
Tirupur-641 602.

... Petitioner

vs.

The Income Tax Officer,
Ward-I(1), Income Tax Office,
Tirupur.

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorari calling for the records on the files of the respondent in PAN/GIR No.ALUPM8823E, dated 21.11.2016 for the assessment year 2014-15 and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice and issue such further writ, order or direction, as this Hon'ble Court may deem fit and proper in the circumstances of the case.

For Petitioner : Mr.R.Senniappan

For Respondent : Mr.T.Parmod Kumar Chopda

WEB COPY
ORDER

1. Issue notice. Mr.T.Parmod Kumar Chopda, accepts notice, on behalf of the Revenue.

1.1. With the consent of the learned counsels for the parties, the writ petition is taken up for final hearing and disposal.

2. This writ petition is directed against the assessment order dated 21.11.2016, passed under Section 143(3) of the Income Tax Act, 1961 (in short "the 1961 Act").

2.1. By virtue of the impugned order, the petitioner's total income has been pegged at Rs.21,64,740/-.

3. The petitioner, on the other hand, qua the Assessment Year (AY) in issue, (i.e., AY 2014-15), had returned total income of Rs.9,56,650/-.

4. The Revenue, apparently, on cross verification of the information available with it, and that, which was reflected in the tax audit report, came to the conclusion that the petitioner had not disclosed the amount standing to its credit in the accounts maintained with the Indusind Bank, for the AY in issue.

4.1. Accordingly, summons under Section 131(1) of the 1961 Act, were issued to the Indusind Bank, Tiruppur Branch, which, revealed that the petitioner maintained an account in the relevant financial year, i.e., 2013-14, and that, in the said year, he had a sum of Rs.12,08,090/- standing to his credit.

4.2. Based on the receipt of the aforesaid information, the said sum was added as unexplained income, by taking recourse to provision under Section 115 BBE of the 1961 Act.

4.3. This is how, via, the impugned order, the Revenue, has determined the taxable income of the petitioner and pegged it at Rs.21,64,740/-, as against the amount reflected in the return filed by the petitioner.

4.4. It is the petitioner's case that no opportunity was given to him, to explain, as to how the amount stood to his credit, in the Indusind Bank account maintained by him, with the Tiruppur Branch.

5. Mr.Chopda, states that the opportunities were given to the petitioner and since, no explanation came forth, the impugned assessment order was passed.

6. I have heard the learned counsel for the parties.

7. A perusal of the impugned order would show that the Assessing Officer, without indicating in the order, the dates, on which, explanations were sought from the petitioner, has proceeded to note that because no satisfactory explanation was received, the said amount was added to the taxable income of the petitioner.

7.1. As a matter of fact, in the opening sheet of the assessment order, against column, "Date(s) of hearing", the

Assessing Officer records : "various dates as per the assessment records".

7.2. Quite clearly, the impugned order is silent, as indicated above, with regard to the date, on which, notice was issued to the petitioner and explanation was sought from him, with regard to the aforesaid aspect of the matter.

8. In these circumstances, I am inclined to agree with the submission of the learned counsel for the petitioner that due opportunity was not given to explain the circumstances, in which, the aforementioned amount was found standing to his credit in the account maintained with Indusind Bank.

9. Accordingly, the impugned order is set aside.

9.1. Needless to say that the respondent will be at liberty to pass a fresh assessment order, after affording due opportunity to the petitioner, albeit, in accordance with law.

9.2. For this purpose, the petitioner will appear before the Assessing Officer/respondent on 07.02.2017 at 11.00 a.m. In case, the said date is not convenient, the Assessing Officer/respondent, will fix a fresh date, which will be proximate to the date fixed by the Court.

9.3. As indicated above, a fresh order will be passed only after giving due opportunity to the petitioner.

10. The captioned writ petition is disposed of with the aforesaid direction. Resultantly, the pending application is closed. There shall, however, be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

सत्यमेव जयते Sub Assistant Registrar

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To

The Income Tax Officer,
Ward-I(1), Income Tax Office,
Tirupur.

+1cc to Mr.Senniappan, Advocate, S.R.No.3222

UG(CO)
RS(27/01/2017)

W.P.No.958 of 2017