IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2017

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.32512 of 2017
and W.M.P.No.35834 of 2017

Dr.C.S.Krishnamurthy ... Petitioner

Vs.

The Assistant Commissioner of Income Tax,
Cuddalore Circle, S.N.Chavady,
Cuddalore - 2. ... Respondent

Prayer : Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records in No.AEKPC1744B/ACIT/Cdlr-Cir/2012-13 dated 30.11.2017 on the file of the respondent and quash the same and direct the respondent not to enforce the demand if any pending disposal of the writ petition before this Court.

For Petitioner : Mr.V.S.Jayakumar

For Respondent : Mr.A.P.Srinivas
Senior Panel Counsel

O R D E R

Heard Mr.V.S.Jayakumar, the learned counsel appearing for the petitioner and Mr.A.P.Srinivas, the learned Senior Panel Counsel appearing for the respondent. With the consent on either side, the writ petition itself is taken up for disposal.

2.The petitioner is an Orthopaedic Surgeon, who retired from service during 2015. In this writ petition, the petitioner has impugned the proceedings of the respondent dated 30.11.2017, by which the respondent has justified his action in reopening the assessment for the year 2012-2013. It may not be necessary for this Court to venture too deep into the factual matrix as the validity of the impugned order is challenged on the technical ground that the petitioner's objections were not considered. It is to be pointed out that the present proceedings is the second reopening proceedings as the first proceedings having been done by the respondent and an assessment order dated 16.02.2015 was passed under Section 143(3) r/w. 147 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") accepting the details furnished by the petitioner in the return of income. The respondent issued a notice dated 27.03.2017 under Section 148 of the Act proposing to reopen the assessment for the year 2012-2013. The petitioner by letter dated 19.04.2017 stated about the earlier reopening proceedings and how the assessment order was passed and stated that there is no scope for issuing a second notice under Section 148 of the Act. The petitioner also specifically requested the respondent to arrange to give the reasons recorded for issuance of the second reopening notice and along with the said letter, the petitioner enclosed the following details, viz., (1) ITR-V, (2) Statement of income, (3) Form 26AS, (4) Intimation U/s.143(1), (5) Notice U/s.148, (6) Assessment Order U/s.143(3) r/w.s. 147 dated 16.02.2015 and (7) Challan for payment of Rs.27,810/-.

3.According to the petitioner, the said communication has reached the office of the respondent. However, by way of abundant caution, the petitioner addressed another letter dated 26.07.2017 referring to his earlier letter along with which documents were furnished and requested the respondent to inform him that if any further document is required, he is ready and willing to furnish the same. The respondent by communication dated 08.08.2017 furnished the reasons for reopening. The respondent by notice dated 12.10.2017 under Section 143(2) of the Act directed the petitioner to attend the hearing on 24.10.2017. This was adjourned to 28.11.2017. The petitioner would state that he was aged about 72 years and he was under medical treatment and was advised bed rest and therefore, could not attend the hearing on 28.11.2017 and hence, sent a letter to the respondent objecting to the reopening proceedings and sent the same by courier on 27.11.2017. The petitioner would further state that as per the proof of delivery furnished by the courier agency, the same was delivered in the office of the respondent on 28.11.2017. However, the impugned order has been passed without reference to such objections filed by the petitioner dated 27.11.2017. One more error which the respondent has committed in passing the impugned order is that by observing that the petitioner did not demand for the reasons though there has been a demand made by the petitioner.

4.The reasons for reopening appears to be that certain amounts were found to have been deposited in the petitioner's bank account which the respondent proposed to treat it as other than sale of agricultural land and levied tax on the said amount. On receipt of the impugned order, the respondent has sent a representation dated 07.12.2017 enclosing a copy of the letter dated 27.11.2017 along with which the petitioner has produced the statement giving details of the amount remitted in the bank and also copies of the bank account. Though this has been acknowledged by the respondent on 07.12.2017, till date there has been no further response from the respondent which has prompted the petitioner to approach this Court by way of this writ petition.

5.Considering the decision of the Hon'ble Supreme Court in the case of GKN Drive Shafts (India) Limited vs. Income Tax Officer reported in 2002 Supp (4) SCR 359, the respondent is bound to furnish the reasons for reopening, for which the assessee is entitled to file his objections after which a speaking order is to be passed to enable the assessee to question the same, if he is aggrieved. Therefore, this procedure requires strict interpretation and if there is any doubt as to whether the notice was served or reasons were communicated or not, the interpretation should lien in favour of the assessee. For such reasons, this Court is inclined to interfere in the matter and pass appropriate orders.

6.For the above reasons, the writ petition is allowed, the impugned order is set aside and the matter is remanded to the respondent for fresh consideration. The respondent is directed to consider the petitioner's objection dated 27.11.2017, afford an opportunity of personal hearing to the authorized representative of the petitioner and pass a speaking order on merits and in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

cse

To

The Assistant Commissioner of Income Tax,
Cuddalore Circle, S.N.Chavady,
Cuddalore - 2.

+1 cc to Mr.A.P.Srinivas Advocate sr 89734
+1 cc to Mr.V.S.Jaakumar advocate sr 89381

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ssv(co)

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