IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.10.2017

Coram:

THE HON'BLE MR. JUSTICE T.S. SIVAGNANAM

W.P.No.13863 of 2017
and
W.M.P.Nos.15049 & 15050 of 2017

C. Anitha
...Petitioner

Versus

1. The Commissioner of Income Tax- Appeals - 2
121 MG Road, Nungambakkam,
Chennai - 600 034.

2. Income Tax Officer,
Non Corporate Ward - 1 (1)
Room No.305, 3rd Floor, Wanaparthy Block,
Aayakar Bhavan,
121, Nungambakkam High Road,
Chennai - 600 034. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of writ of certiorarified mandamus calling for the records of the first respondent contained in its impugned order dated 28.03.2017 bearing ITA No.83/CIT(A)-2/2015-16 in PAN No.AALPA8804D for the assessment year 2012-13, passed under Section 251 of the Income Tax Act, 1961, and to quash the same insofar as it enhances the assessment made of the Petitioner's income by the Second Respondent, and to consequently remand the matter to the first respondent for a fresh order to be passed in accordance with law on the notice seeking to enhance the assessment.

For Petitioner : Mr. Suhrith Parthasarathy

For Respondents: Ms. Hema Muralikrishnan
Senior Panel Counsel

O R D E R

Heard Mr.Suhrith Parthasarathy, learned counsel for the petitioner and Ms. Hema Muralikrishnan, learned Senior Panel Counsel for the respondent.

2. The petitioner has filed this writ petition praying for issuance of a writ of certiorarified mandamus to quash the order passed by the first respondent dated 28.03.2017 under Section 251 of the Income Tax Act, 1961, insofar as it enhances the assessment made by the petitioner's income by the second respondent and to consequently remand the matter to the first respondent for fresh consideration in accordance with law on the notice seeking to enhance the assessment.

3. It may not be necessary for this Court to go into the factual matrix of the case as the impugned order has been challenged on the technical ground that the petitioner did not have an opportunity to contest the proposal for enhancement of assessment pursuant to notice dated 10.11.2016. The petitioner had filed a regular appeal before the first respondent challenging the assessment order passed by the second respondent dated 12.03.2015 for the Assessment Year 2012-13. The first respondent issued a notice under Section 251 (1)(a) of the Act proposing an enhancement of the income and directed the petitioner to show-cause against the proposal on or before 12.12.2016. Subsequently, a notice was issued by the first respondent dated 10.03.2017 stating that the appeal petition filed by the petitioner against the assessment order dated 12.03.2015 along with the proposal of enhancement of assessment would be heard on 23.03.2016 at 02.30pm. The petitioner would state that the date fixed for hearing having been mentioned as 23.03.2016, the petitioner ignored the said notice as being an incorrect notice and expected a fresh notice would be issued by the first respondent. However, the impugned order came to be passed on 28.03.2017 by which the petitioner's appeal petition against the assessment order dated 12.03.2015 has been allowed and simultaneously the proposal made by the first respondent for enhancement of assessment vide notice dated 10.11.2016 has been confirmed. It is clear that to the said extent, the impugned order suffers from violation of principles of natural justice as the petitioner did not have adequate opportunity to put forth their submissions. The Revenue seeks to explain by contending that the date mentioned as 23.03.2016 is a typographical error and it should have been typed as 23.03.2017 and in fact the personal hearing was fixed on the said date and therefore, it is submitted that this cannot be taken advantage by the petitioner. Though the explanation offered by the Revenue could be considered as reasonable, at the time of issuance of notice dated 10.03.2017, this should have been rectified by the first respondent or corrigendum could have been issued. However, the same mistake has been carried over in the impugned order dated 28.03.2017 as could be seen from Paragraph 4.5.

4. Furthermore, the petitioner would state that there was no response filed by their authorized representative to the notice

dated 10.03.2017 and what has been stated in Paragraph 4.5 is factually incorrect. Thus, taking note of the fact that the petitioner should have an opportunity to put forth their objections with regard to the proposal for enhancement as the proposal in the notice impugned to that extent requires to be set aside, and the matter remanded to the first respondent for fresh consideration.

Accordingly, this writ petition is allowed and the impugned order dated 28.03.2017 is set aside insofar as it confirms the proposal for enhancement of assessment and the matter is remanded to the first respondent for fresh consideration, who shall issue a fresh notice of hearing giving reasonable opportunity to the petitioner, hear the petitioner in person and pass a reasoned order on merits and in accordance with law. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-CCC)

//True Copy//

Sub Assistant Registrar

mrr/gpa
To

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+ 1 cc to Mr. Arun Karthik, Advocate SR.71836
+ 1 cc to Mr.S. Hema Muralikrishnan, Advocate SR.71941

W.P.No.13863 of 2017

GJ-II(CO)
EU(31/10/2017)