IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.09.2017

CORAM

THE HONOURABLE MR. JUSTICE T.S. SIVAGNANAM

W.P. No. 29264 of 2006
&
M.P. No. 1 of 2006

Shri K.M. Vidyasagar ..Petitioner

Vs.

1. Commissioner of Income Tax-VI,
Uttamar Gandhi Salai,
Chennai - 600 034.

2. Income Tax Officer,
Ward -V(4),
Chennai. ..Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Certiorari to call for the records on the file of the 1st respondent in C.No. 6501/(70)/06-07/VI dated 05.06.2006 and quash the impugned order and direction to pass orders in accordance with law.

For Petitioner :: Mr.J. Balachander

For Respondents :: Mr.J. Narayanaswamy
Standing Counsel

O R D E R

Heard Mr.J. Balachander, learned counsel for the petitioner and Mr.J. Narayanaswamy, learned Standing Counsel for respondents.

2. The petitioner is aggrieved by the order passed by the 1st respondent dated 05.06.2006 by which the petition filed by the petitioner under Section 154 read with Section 264 of the Income Tax Act, 1961 was rejected. The reason for filing the petition was on account of the fact that the petitioner's application under Section 264 of the said Act requesting the Commissioner of Income Tax to delete the addition made to an extent of Rs.5,25,000-00 to the total income for the assessment

year 2000-2001 was dismissed for non-prosecution.

3. It appears that the application filed under Section 264 of the said Act was listed for hearing before the 1st respondent on account of change of jurisdiction and a letter was sent to the petitioner dated 04.03.2005 informing that the hearing of the case was fixed on 11.03.2005. The petitioner did not appear on the said date and another letter dated 14.03.2005 was sent fixing the date of personal hearing as 22.03.2005. However, there was no response. As a result, the 1st respondent rejected the application of the petitioner. Aggrieved by the same, the petitioner, left with no other remedy, applied for rectification vide petition dated 25.01.2006. The petitioner's specific case is that the notice of hearing dated 04.03.2005 never reached the hands of the petitioner and therefore, the petitioner was unable to appear for the said hearing. So, the petitioner requested that an opportunity of hearing may be granted.

3. When the petition under Section 154 read with Section 264 of the Income Tax Act, 1961 was taken up for consideration, the 1st respondent, took note of the grounds on which the petitioner sought for revision in his petition dated 25.01.2006 and proceeded to state that there was no requirement to afford an opportunity of personal hearing while hearing the revision petition under Section 264 of the said Act. That apart, it has been stated that the petitioner has produced the Bank Statement, written submissions and all relevant records before the 1st respondent and such records were all available with the predecessor-in-office and all the records were gone through. Therefore, the 1st respondent observed that the claim of the assessee that the matter was not decided on merits is incorrect.

4. A cursory perusal of the order dated 30.03.2005 shows that there is no finding rendered by the 1st respondent on the merits of the matter except stating that the reports of the Assessing Officer and the Additional Commissioner of Income Tax have been perused and the records have been gone through. This is insufficient to show that there was application of mind to the facts of the case. In any event, if the 1st respondent had considered the matter on merits, then reasons should have been assigned in the order dated 30.03.2005. In the absence of any reasons assigned, it has to be held that the merits of the matter were not gone into by the 1st respondent. The observation that there was no necessity to afford an opportunity of personal hearing is incorrect for the simple reason that, the predecessor in office, in her discretion, had afforded an opportunity of personal hearing. That being so, the successor officer cannot state that there is no necessity to afford an opportunity of personal hearing, when his predecessor had thought it fit to do so.

5. Thus, for all the above reasons, this Court is of the view that the petitioner should not be non-suited on technicalities. Accordingly, the writ petition is allowed and the orders dated 05.06.2006 & 30.03.2005 are set aside and the 1st respondent is directed to hear the petition filed under Section 264 of the Act and take a decision on merits and in accordance with law, after affording an opportunity of personal hearing to the petitioner. No costs. Connected M.P. is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

nv/sai

To

1. Commissioner of Income Tax-VI,
Uttamar Gandhi Salai,
Chennai - 600 034.

2. Income Tax Officer,
Ward -V(4),
Chennai.

+1cc to Mr.J.Narayanasamy, Advocate, S.R.No.65347

W.P. No. 29264 of 2006

SAI(CO)
GN(05/10/2017)