IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 02.11.2018
CORAM
THE HON'BLE MRS. V. BHAVANI SUBBAROYAN
W.P.Nos.15953 and 15954 of 2008 and
M.P.Nos.1 and 2 of 2008

Smt.Indu Chowdhary ... Petitioner (in both WPs)

Vs.

1. The Commissioner of Income Tax - IX
O/o The Commissioner of Income Tax IX,
Kannammai Buildings, No.611, Anna Salai,
Chennai-6.

2. The Income Tax Officer,
City Ward IV (5), Kannammai Buildings,
No.611, Anna Salai,
Chennai-6.

3. The Tax Recovery Officer XXIV,
Range XI, Income Tax Department,
Kannammai Buildings,
No.611, Anna Salai,
Chennai-6. ... Respondents (in both WPs)

Prayer in W.P.No15953 of 2008:

Writ Petition filed under Article 226 of Constitution of India to issue a Writ of Certiorari to call for the records on the files of the second respondent in G.I.No.6272-P/1981-82, dated 31.03.1999 and quash the same as illegal and non-est in law.

Prayer in W.P.No15954 of 2008:

Writ Petition filed under Article 226 of Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records on the files of the first respondent in C.No.13/CIT-IX/264/07-08, dated 19.03.2008 and quash the same as illegal and direct the first respondent to decide the petition filed under Section 264 of the Income Tax Act on merit.

For Petitioner [in both the WPs] : Mr.J. Pramodkumar Chopda

For Respondents [in both the WPs] : Mrs.Hema Muralikrishnan
Standing Counsel (Income Tax)

C O M M O N   O R D E R

The petitioner has filed these present Writ Petitions W.P.No15953 of 2008 is filed to quash the second respondent assessment in G.I.No.6272-P/1981-82, dated 31.03.1999 and the W.P.No.15954 of 2008 is filed to quash the order of the first respondent in C.No.13/CIT-IX/264/07-08, dated 19.03.2008 as illegal and further directs the first respondent to decide the Writ Petitions filed under Section 264 of the Income Tax Act on merits.

2.The case of the petitioner in both the writ petitions is that the petitioner Smt.Indu Chowdhary is the Wife of Late. Sri Paramnivas Chowdhary, who died on 20.11.1997. The petitioner's husband was Income tax Assessee and he was assessed during the assessment year 1981-82.

3.The learned counsel appearing for the petitioner would contend that on 12.07.2007, the petitioner has received a notice of demand to the defaulter in Form No.I.T.C.P.1, TRC.No.3/2007-08, dated 11.05.2007 and notice to legal representative in Form No.ITCP-29 in TRC.No.01,02,03/07-08, dated 11.05.2007 from the third respondent/Tax Recovery Officer. With regard to the demand notice addressed to the petitioner's husband, it was stated that the deceased husband of the petitioner as on 31.03.2006 a sum of Rs.3,97,414/- is due and called him to pay the said sum within 15 days together with interest under Section 220(2) of Income Tax Act. With regard to the second notice issued on the same date calling upon the petitioner and the third respondent/Tax Recovery Officer, it was stated that the husband of the petitioner is due a sum of Rs.4,01,745/- together with interest, costs, charges and expenses.

4.Further, the learned counsel appearing for the petitioner submitted that on receipt of the said notices the petitioner made an enquiry with the Department Officials and got a copy of the said assessment order, dated 31.03.1999 in GI.No.6272-P/81-82 relating to the assessment year 1981-82 passed in the name of her deceased husband.

5.The learned counsel appearing for the petitioner further submitted that the original assessment order for the year 1981-82 was set aside by the Income Tax Appellate Tribunal in its order in I.T.A.No.2466/Mds/1989/dated 31.10.1996. After 29 months, the case was posted for hearing on 10.03.1999, for which the notice under Sections 143(2), 142(1) on the assessee, calling for the books of accounts and to produce the creditors confirmation of loans taken by the

Assessee, was alleged to have been served on the Assessee's husband on 01.03.1999 and since there was no response, an assessment order was completed on the basis of judgment under Section 144 r/w Section 254 of the Income Tax Act.

6.The learned counsel appearing for the petitioner further submitted that the assessment order was served on dead person and the assessment order is exfacie illegal and therefore, he filed a petition under Section 264 of the Income Tax Act on 14.11.2007 for waiver of tax and interest thereon within 4 months from the date of the knowledge of the assessment order.

7.The learned counsel for the first respondent submitted that the petition filed by the petitioner was dismissed vide its impugned order dated 19.03.2008 on the ground that there was a delay of 7 long years in filing the petition and in the absence of any petition for condonation of delay, the petition filed by the petitioner came to be dismissed. Challenging the said assessment order dated 31.03.1999 passed by the second respondent/Income Tax Officer and the dismissal order dated 19.03.2008 passed by the first respondent, the present writ petitions have been filed by the petitioner.

8.Counter affidavit filed on behalf of the respondents/Income Tax Department and claimed that the notices were served on the assessee on 01.03.1999 which was duly acknowledged [shown as Exhibit-1] and the legal heir of the assessee has not responded to the notices and she has not brought to the knowledge of the Assessing Officer, the date of death of the assessee on 20.11.1997. As there was no response from the assessee and the assessment was getting time barred under Section 153, the assessment was completed under Section 144 r/w Section 254 of the Income Tax Act, 1961 on 31.03.1999. The demand notice and challan were also issued to the assessee on 31.03.1999. Despite having the knowledge of the assessment against the petitioner's husband, the petitioner has not filed any petition under Section 264 in time or any petition seeking for condonation of delay. There was a delay of seven long years in filing petition under Section 264. The Authority has rightly rejected the petition filed by the petitioner.

9. Heard the learned counsel appearing for the petitioner as well as the learned counsel for the respondents/Income Tax Department and perused all the materials available on record.

10.The learned counsel for the petitioner would submit that any order passed against the dead person is non-est in law, the eye of law and exfacie illegal and cannot be sustained on the legal heirs of the deceased that too, when the order of assessment in the year 1981-82 was set aside by the Income Tax Appellate Tribunal as early as on 31.03.1996. The learned counsel for the petitioner has also submitted that the rejection of her petition filed under Section 264 of the Income Tax Act on the ground that the delay is also illegal and the petitioner has approached the Authority within 4 months from the date of receipt of the assessment order dated 31.03.1999. Under the above circumstances, the petitioner prayed that there is no delay on her part and the Authority ought to have considered her petition under Section 264 of the Income Tax Act, on merits and pass orders accordingly.

11. It is seen from the records that it is not in dispute that the assessment order in the year 1981-82 came to be issued in the name of the petitioner's husband, Late.Sri Paramnivas Chowdhary, who passed away on 20.11.1997. However, the assessee has filed an appeal before the Income Tax Appellate Tribunal, who had set aside the original impugned assessment order for the year 1981-82 in I.T.A.No.2466/Mds/1989/dated 31.10.1996. The said averment was not denied by the learned counsel for the respondents. It could be seen from the assessment order that after the assessment order came to be set aside by the Income Tax Appellate Tribunal on 31.10.1996, after delay of 29 months, for the said case has been posted for hearing, and in between, the petitioner's husband passed away on 20.11.1997. Since there was no response, the judgment came to be passed under Section 144 of the Income Tax Act. However, for the first time, only on 11.05.2007, a notice was issued on the petitioner wife of the deceased Late.Sri Paramnivas Chowdhary, claiming a sum of Rs.4,01,745/- being an amount due from her husband along with interest and other expenses. It is only after that, the assessment order came to be issued under Section 144 of the Income Tax Act, dated 31.03.1999. Immediately, the petitioner filed a petition under Section 264 of the Income Tax Act, dated 07.11.2007, which is evident from the records produced. The first respondent/Income Tax Officer has dismissed the said petition by its order dated 19.03.2008 on the ground that the petitioner has not filed any petition under Section 264 within a period of one year from the date on which the order in question has been communicated to the assessee, the petition has been filed by the petitioner under Section 264 of the Income Tax Act not immediately, but after a period of 7 long years and without even filing a condoning delay petition.

12.This Court is unable to accept the above reasons substantiated by the first respondent/Commissioner of Income Tax, while dismissing the petition filed under

Section 264 by the petitioner. When the fact remains that the petitioner was in receipt of notice of the demand only on 11.05.2007 (i.e.,) under Section 264, the date of knowledge. The petitioner has filed a petition on 07.11.2007, which is well within a period of one year from the date of knowledge, (i.e.,) 11.05.2007. When the petitioner was put into notice by the third respondent that a sum of Rs.4,01,745/- is due from her husband. However, the first respondent in its order stated that the petition filed under Section 264 can only be entertained if the petition has been filed by the petitioner within a period of one year from the date on which the order has been passed. The petitioner was not aware of the demand notice issued by the Income Tax Officer, when the special proceedings have come to an end by 1996 itself. That apart, the present petition filed under Section 264 of the Income Tax Act, by the petitioner is well within the time. When the petitioner was put on notice by the third respondent/Tax Recovery Officer pertaining to the due for her husband, the facts has to be taken into consideration are that the initial assessment order was set aside by the I.T.A.No.2466/Mds/1989/dated 31.10.1996 and it is not in dispute that only after 29 months, the hearing of the assessment order was completed under Section 144 of the Income Tax Act. During the interregnum period, the petitioner's husband expired on 20.11.1997. Under such circumstances, it is evidently clear that the impugned assessment order under Section 144 came to be passed against the dead person.

13.Under the above circumstances, the order dated 19.03.2008 passed by the first respondent is hereby set aside and remitted back to the first respondent/Commissioner of Income Tax for fresh adjudication, on merits. It is believed that the assessment order dated 31.03.1999, which is under challenge in W.P.No.15953 of 2008 is kept in abeyance till the final order on merits is passed by the first respondent/Commissioner of Income Tax on the petition filed under Section 264 of the Income Tax Act by the petitioner.

14.Accordingly, in W.P.No.15953 of 2008 is disposed of and W.P.No15954 of 2008 is allowed as stated supra, and the impugned order of the first respondent dated 19.03.2008 is quashed. This Court directs the first respondent/Commissioner of Income Tax to decide the petition filed under Section 264 of the Income Tax Act on merits and pass appropriate orders in accordance with law within a period of eight weeks from the date of receipt of a copy of this order by giving an opportunity to the petitioner to substantiate her case by producing all necessary documents. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Deputy Registrar(CS)

//True Copy//

Sub Assistant Registrar

msm

To

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W.P.Nos.15953 and
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A.SK(22/02/2019)