In the High Court of Judicature at Madras

Dated : 13.6.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.14190 of 2018 & WMP.No.16755 of 2018

N.Arjunan ...Petitioner

Vs

The Income Tax Officer, O/o.the
Income-Tax Officer, Ward 2(2),
Gandhiji Road, Erode-638001. ...Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records vested with the respondent in respect of its notice dated 28.2.2018 pursuant to the order dated 30.12.2016, quash the same and direct the respondent to issue an appropriate notice as may be applicable under the circumstances of the case by giving the petitioner all opportunities to file his submissions calculation summaries, necessary records and documents in connection with making assessment for the assessment year 2014-2015 and pass orders afresh in accordance with law.

For Petitioner : Mr.T.Sundar Rajan
For Respondent : Mr.A.P.Srinivas, SSC

ORDER

Mr.A.P.Srinivas, learned Senior Standing Counsel accepts notice for the respondent. Heard both. In the light of the limited relief sought for by the petitioner, the writ petition itself is taken up for final disposal.

2. The petitioner has impugned a notice issued by the respondent under Section 154/155 of the Income Tax Act, 1961 stating that the assessment order passed under Section 143(3) of the said Act for the year 2014-15 dated 30.12.2016 requires to be amended, as there is a mistake, which is apparent from the record within the meaning of Section 154/155 of the said Act.

3. The particulars of the mistake proposed to be rectified have been furnished in the impugned notice. The petitioner was directed to appear before the respondent and alternatively they were directed to file their written reply so as redo the assessment on or before the date fixed for personal hearing. The petitioner sought for an adjournment, apart from several other things, contending that as against the assessment, which was completed under Section 143(3) of the said Act, the petitioner preferred an appeal before the Commissioner of Income Tax (Appeal) on 29.1.2017 and that the appeal is pending and therefore, the respondent should defer further action pursuant to the impugned notice.

4. It appears that pursuant to the request made by the petitioner for an adjournment on four occasions, the respondent is yet to fix a date and has not taken any decision pursuant to the impugned notice. With these facts, the petitioner seeks to quash the impugned notice and also seeks to permit the petitioner to file their submissions, calculation summaries, records and documents and thereafter direct the respondent to pass fresh orders in accordance with law.

5. In my view, the consequential relief sought for by the petitioner, if considered, would be sufficient to safeguard the interest of the assessee and there would be no necessity to quash the impugned notice, as there is no statutory bar for the Assessing Officer to rectify the assessment order dated 30.12.2016 even if an appeal is pending against it.

6. The learned counsel for the petitioner does not have instructions as to whether any interim order has been granted by the Appellate Authority. Be that as it may, the petitioner seeks adequate opportunity to place their submissions before the respondent and also requests that they should be heard in detail on such submissions.

7. The learned Senior Standing Counsel for the Revenue does not have serious objections to such a course of action, as they cannot have any objection, as it would amount to violation of the principles of natural justice if such an opportunity is not granted to the petitioner.

8. For the above reasons, the writ petition is disposed of with the following directions :

The petitioner is directed to submit their objections to the impugned notice dated 28.2.2018 within a period of 15 days from the date of receipt of a copy of this order. It is well open to the petitioner to substantiate their stand taken in the objections to be filed by supportive documents in the form of a paper book. On receipt of the objections along with documents, if any filed, the respondent shall fix a date for personal hearing, hear the petitioner or the authorized representative of the petitioner and pass a speaking order on merits and in accordance with law. It is made clear that the objections to be filed by the petitioner to the impugned notice dated 28.2.2018 will be without prejudice to the grounds raised by the petitioner in the appeal filed before the Commissioner of Income Tax (Appeals) against the original assessment order dated 30.12.2016. No costs. Consequently, the connected WMP is closed.

RS

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

The Income Tax Officer,
O/o.the Income-Tax Officer,
Ward 2(2), Gandhiji Road,
Erode-638 001.

+ 1 cc to Mr.T. Sundar Rajan, Advocate Sr.36935
+ 1 cc to Mr.A.P.Srinivas, SSC, SR.37084

WP.No.14190 of 2018&
WMP.No.16755 of 2018

(CCC)
EU(22/06/2018)