In the High Court of Judicature at Madras

Dated : 17.7.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.18014 of 2018

S.Thalapathy ...Petitioner

Vs

The Income Tax Officer, Non-Corporate Ward 1(1), Coimbatore. ...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 in relation to the communication of the respondent dated 12.6.2018 in AEHPT4604C/NCW-1(1)/CBE/A.Y.2010-11, quash the same and consequently direct the respondent to furnish the documents requested in the petitioner's communication dated 04.6.2018.

For Petitioner : Ms.G.Janane for M/s.G.R.Associates
For Respondent : Mr.A.P.Srinivas, SSC and
Mr.A.N.R.Jayaprathap, SC

ORDER

Mr.A.P.Srinivas, learned Senior Standing Counsel and Mr.A.N.R. Jayaprathap, learned Standing Counsel accept notice for the respondent. Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner has filed this writ petition challenging a communication sent by the respondent dated 12.6.2018 in response to his representation dated 04.6.2018. The petitioner sent the said representation stating that in continuation of his request for a copy of the assessment order, which was accepted by the respondent, he requested that he may be supplied the following information/documents :

> "1. Certified copy of the notice under Section 148 with proof of date of dispatch and date of service;
>
> 2. Copy of the evidence as to on whom notice under Section 148 was served;
>
> 3. Certified copy of the subsequent notices referred to in the assessment order with proof of date of service and details of the person on whom such notices were served;

4. Certified copy of the reasons recorded resulting in the issue of notice under Section 148; and

5. Date, on which, details as to the cash deposits into savings bank account came to the knowledge of the Assessing Officer and if there is delay in taking cognizance, reasons for the same."

3. The respondent, by the impugned communication, stated that the order of assessment giving details of notices issued and the issues involved were already sent to the petitioner and that there is no provision under the Income Tax Act, 1961, which enables the respondent to provide certified copy of the documents/details requested by the petitioner as specified in the letter after the completion of the assessment proceedings. Therefore, the respondent declined to provide details/documents.

4. Admittedly, the request made by the petitioner for furnishing a copy of the assessment order has been acceded to by the respondent. In the assessment order, there has been a reference to a notice dated 31.3.2017 issued under Section 148 of the said Act stated to have been served on the assessee on 01.4.2017. Apart from that, it has been further stated that the notice under Section 142(1) of the said Act dated 14.11.2017 was issued and served on the petitioner on 15.11.2017 and that the assessee had not responded to any of the notices or the letters sent. Further, there has also been a reference to the show cause notice dated 05.12.2017, proposing to complete the assessment ex parte treating the cash deposits as unexplained deposits and bringing them into tax, which was issued giving the assessee time till 19.12.2017 to submit his objections. It has been further stated that even after the time given, there was no response from the assesssee.

5. Thus, the respondent, in the assessment order dated 26.12.2017, proceeded to complete the assessment ex parte on the ground that the petitioner did not represent his case though enough opportunity has been granted. The respondent rejected the request made by the petitioner on the ground that already, a copy of the assessment order has been given, which is the relevant information regarding the notices issued and the details.

6. However, the petitioner has only sought for the copies of documents, which have been referred to in the assessment order, since, according to the respondent, notices were communicated to the petitioner. In my considered view, the respondent could not have denied the request made by the petitioner, as the petitioner is entitled to canvass all the

issues before the Appellate Authority, before whom, the appeal petition filed by the petitioner against the assessment order is pending. Thus, this Court finds that the documents in so far it relates to S.Nos.1 to 4 are concerned have to be furnished to the petitioner, failing which, there will be a violation of the principles of natural justice. So far as S.No.5, wherein the petitioner seeks the date, on which, the details as to cash deposit into the savings bank account came to the knowledge of the Assessing Officer, is concerned, this would touch upon the merits of the assessment.

7. Therefore, the request, as framed by the petitioner in S.No.5, cannot be acceded to, but only the dates, on which, the cash deposits were made into the savings bank account, can be furnished and in fact, such details may find a place even in the reasons for reopening. Therefore, the respondent has to furnish the documents listed in S.Nos.1 to 4 and in respect of S.No.5, the respondent is directed to furnish only the details as to the dates, on which, the cash deposits were made into the savings bank account. The above directions shall be complied with by the respondent within a period of two weeks from the date of receipt of a copy of this order.

8. With the above directions, the writ petition is disposed of. No costs.

Sd/-
Assistant Registrar(Audit)

//True Copy//

Sub Assistant Registrar

To
The Income Tax Officer,
Non-Corporate Ward 1(1), Coimbatore.

+1cc to Mr.G.R.ASSOCIATES, Advocate, S.R.No.47190
+1cc to the Government Pleader, S.R.No.47190

WP.No.18014 of 2018

KJ(CO)
TR(02/08/2018)