IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2019

CORAM

THE HON'BLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.NO.3625 OF 2019
AND
W.M.P.NO.3967 OF 2019

Jaganmohan ...Petitioner

vs.

1. The Principal Commissioner of Income Tax - 5
Nungambakkam, Chennai-34.

2. The Assistant Commissioner of Income Tax
Non-Corporate Ward-3
Nungambakkam, Chennai-34.

3. The Income Tax Officer
Non-Corporate Ward-3(1)
Nungambakkam, Chennai-34. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the 3rd respondent made in the assessment order dated 14.12.2018 for AY 2011-2012 insofar as the petitioner is concerned and to quash the same.

For Petitioner : Mr.C.Mani Shankar
Senior Counsel
for Mr.C.S.Kiran

For Respondents : Mrs.Hema Muralikrishnan
Senior Standing Counsel

O R D E R

This writ petition is filed challenging the order of the assessment dated 14.12.2018 passed under Section 144 read with Section 147 of the Income Tax Act, 1961, relevant to the assessment year 2011-2012.

2. Heard both sides.

3. The impugned assessment order was passed pursuant to and consequence of reopening of the assessment under Section 147 of the Income Tax Act, 1961. Admittedly, as against the impugned order of assessment, a statutory appellate remedy is available to the petitioner. However, the present writ petition is filed specifically by contending that notice under Section 148 of the Income Tax Act, 1961, was not served on the petitioner and therefore, the entire proceedings are vitiated.

4. On the other hand, it is contended by the learned counsel appearing for the Revenue that the notice was issued to the petitioner on 29.03.2018 and dispatched to the petitioner on the very same day from Teynampet Post Office, through speed post and therefore, the petitioner is not entitled to contend as if the notice under Section 148 of the Income Tax Act, 1961, was not issued.

5. On the other hand, the learned counsel for the petitioner contended that no such notice was ever served on the petitioner. It is further contended by the learned counsel for the petitioner that based on the query made under the Right to Information Act, it was found that the said consignment was booked from Kottayam Post Office and therefore, the respondents are not justified in claiming that such notice was issued through their office.

6. In support of the contention that the notice was dispatched from the office of the respondent on 29.03.2018, the learned counsel for the Revenue produced the original Dispatch Register, wherein, it is shown that the petitioner was dispatched with a communication on 29.03.2018 through speed post. It is also seen that the Postal Department affixed seal on the said register, which, in the considered view of this Court, is enough proof for supporting the contention of the Revenue that the notice was sent to the petitioner on 29.03.2018.

7. In such view of the matter, I do not think that the petitioner is entitled to canvass the merits of the assessment order before this Court without challenging the same by filing regular appeal. Accordingly, without expressing any view on the merits of the matter, this Writ Petition is disposed of by granting liberty to the petitioner to file an appeal before the concerned authority within a period of two weeks from the date

of receipt of a copy of this order. If any such appeal is filed, the same shall be considered on its own merits and in accordance with law without reference to the period of limitation. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

mk

To

1. The Principal Commissioner of Income Tax - 5
   Nungambakkam, Chennai-34.

2. The Assistant Commissioner of Income Tax
   Non-Corporate Ward-3
   Nungambakkam, Chennai-34.

3. The Income Tax Officer
   Non-Corporate Ward-3(1)
   Nungambakkam, Chennai-34.

+1cc to Mrs.Hema Muralikrishnan, Advocate, S.R.No.92252

W.P.No.3625 of 2019

PP(CO)
CS/13/12/2019