IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 14.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.20181 of 2007

A.Murugappan,
Rep. by Power Agent
Mrs.V.Shanthi ...Petitioner

Vs

1. The Assistant Director of Income Tax,
121, Nungambakkam High Road,
(International Taxation),
Chennai - 600034.

2. The Director of Income tax,
(International Taxation),
New Delhi.

3. The Central Board of Direct Taxes,
Rep. by its Secretary,
Government of India,
Ministry of Finance,
Department of Revenue, North Block,
New Delhi - 110002. ...Respondents

PRAYER:Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, to call for the records on the file of the third respondent in F.No.400/2/2006-IT(B) dated 24.02.2006 and quash the impugned order therein and direct the third respondent to pass order in accordance with law.

For Petitioner : Mr.A.S.Sriraman,
for Mr.S.Sridhar
For Respondents: Mrs.Hema Muralikrishnan, SSC

O R D E R

The prayer sought for in the present writ petition is to quash the order of the third respondent in F.No.400/2/2006-IT (B), dated 24.02.2006.

2. It is the case of the petitioner that he had omitted to include the income arising out of the gifts made to his wife under Section 64(i)(iv) of the Income Tax Act, which has resulted in levy of interest for non-payment of Advance Tax, in respect of the assessment years 2000-01 and 2001-02.

3. It is seen that though the petitioner had originally omitted to include the income arising out the gifts made to his wife, the same was duly paid by the petitioner's wife while filing her Return of Income including the income which arose out of the funds invested by her from and out of the gifts received by the petitioner herein. When the petitioner had later realised the mistake, he had filed revised Returns of Income for the aforesaid assessment years and he had paid the taxes subsequently.

4. The learned counsel for the petitioner submitted that omission to include the income arising out of the gifts made to his wife, was inadvertent and not willful and therefore, he would be entitled to exemption as per the Circular of the respondents herein dated 23.05.1996, under Clause 2(e).

5. The learned Standing Counsel appearing for the respondents objected to such a submission stating that the petitioner as well as his wife has filed the Income Tax Returns with the help of Professional Tax Consultants and therefore, claim of inadvertence cannot be a legal ground, since "ignorance of law" is not a valid excuse. Even otherwise, the learned Standing Counsel would submit that such an inadvertence in filing the Returns, will not amount to "unavoidable circumstances" as contemplated under Clause 2(e) of the said Circular. In support of her submissions, the learned Standing Counsel also relied upon a decision of a Division Bench of this Court reported in 2017 (83) taxmann.com 162 (Madras) in the case of Chief Commissioner of Income-Tax, Chennai-34 vs. Rajanikant & Sons and sought for dismissal of the writ petition.

6. I am unable to accept the above submissions, in view of the fact that the above decision relates to circumstances falling under Clause 2(a) to 2(d) of the Circular, whereas the petitioner in the instant case, claims exemption under Clause 2 (e), which pertains to "unavoidable circumstances", wherein, the respondent is entitled to reduce or waive interest under Section 234(A) or 234(B).

7. It is not in dispute that the taxes due on the income for the assessment years 2000-01 and 2001-02 were duly paid by the petitioner's wife while filing her Return of Income including the income which arose out of the funds invested by her, from and out of the gifts received by the petitioner herein. It is

also not in dispute that when the petitioner had realised the mistake, he had filed the revised Returns of Income for the aforesaid assessment years. The only reason cited by the petitioner is that, he had inadvertently omitted to include the income arising out of the gifts made to his wife. The Director General has termed such inadvertence to be not one of falling under "unavoidable circumstances", since ignorance of law is not excusable.

8. This Court is of the view that the petitioner's wife had filed her return of Income by including the income which arose out of the funds invested by her, from and out of the gifts received by the petitioner herein, which can be termed to be a bona-fide disclosure. Likewise, the conduct of the petitioner in filing his revised returns of Income after realising the mistake, will also ratify the bona-fides of the petitioner. When such bona-fides have been clearly established, the case of the petitioner need not be rejected only on the ground that, "ignorance of law" is not excusable and therefore, the petitioner would not be entitled for exemption under Clause 2(e) of the Circular. This is not a case where there is willful disclosure of income or evasion of tax which may lead to levy of penalty for non-payment of tax. On the other hand, the mistake seems to be inadvertent and acceptable and therefore, on the facts and circumstances of the case, it would fall under "unavoidable circumstances" of omission to include the income arising out of the gifts made to his wife. In view of the same, the petitioner would be entitled to succeed in the present writ petition.

9. In the light of the above observations, the order of the third respondent in F.No.400/2/2006-IT(B) dated 24.02.2006, is quashed. Accordingly, the writ petition stands allowed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

hvk

To

1. The Assistant Director of Income Tax,
121, Nungambakkam High Road,
(International Taxation),
Chennai - 600034.

2. The Director of Income tax,
(International Taxation),
New Delhi.

3. The Secretary,
The Central Board of Direct Taxes,
Government of India,
Ministry of Finance,
Department of Revenue, North Block,
New Delhi - 110002.

+1cc to Mr.S.Sridhar, Advocate, S.R.No.48434
+1cc to Mrs.Hema Muralikrishnan, Advocate, S.R.No.48818

W.P.No.20181 of 2007

CP(CO)
CS/28/08/2019