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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30-07-2019

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THE HONOURABLE MR. JUSTICE M.SUNDAR

W.P.No.2531 of 2019

And

W.M.P. Nos.2805 and 2806 of 2019

T.Palani,
Legal heir of Late Mr.Kanniappan
Thiruvengadam,
No.11, Perambur High Road,
Jamaliya,
Chennai-600 012.

..

Petitioner

vs.

Assistant Commissioner of Income Tax,
Non-Corporate Circle-10(1),
Nungambakkam,
Chennai-34.

.. Respondent

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records pertaining to the order of the respondent dated 28.12.2018 Order No. ITBA/AST/S/143(3)/2018-19/1014624990(1) received on 28.12.2018 for assessment year 2016-2017 and quash the same.

For Petitioner : Mr.P.J.Rishikesh

For Respondent : Mr.J.Narayanaswamy,
Senior Standing Counsel (Income Tax).

O R D E R

Mr.P.J.Rishikesh, learned counsel on record for writ petitioner and Mr.J.Narayanaswamy, learned Senior Standing Counsel (Income Tax) on behalf of sole respondent are before this Court.

2. Sole respondent has filed a counter-affidavit dated 17.6.2019 and therefore, pleadings are complete.

3. Be that as it may, with consent of learned counsel on both sides, main writ petition itself is taken up, heard out and is being disposed of.



4. The scope of this entire writ petition is very narrow and in the light of submissions made in the Court in the hearing, it now turns on a narrower compass.

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5. An assessment order made by respondent being 'assessment order dated 28.12.2018 bearing Order No.ITBA/AST/S/143(3)/2018-19/1014624990(1) pertaining to PAN No.ABNPT3323R for the assessment year 2016-2017' (hereinafter referred to as 'impugned assessment order' for brevity) has been called in question in the instant writ petition.

6. Challenge to impugned assessment order is predicated on the sole ground that it has been made in the name of a dead person. There is no disputation or disagreement that impugned order has been made in the name of one Kanniappan Thiruvengadam and that said Kanniappan Thiruvengadam died on 11.10.2015. To be noted, impugned assessment order is dated 28.12.2018.

7. This Court is informed without any disputation or disagreement that writ petitioner before this Court i.e., T.Palani is aforementioned Kanniappan Thiruvengadam's son and legal heir.

8. Learned counsel for writ petitioner submits that returns for assessment year pertaining to impugned assessment order namely, assessment year 2016-2017 was filed by writ petitioner on 30.9.2016, post demise of assessee. After returns were filed on 30.9.2016, the Income Tax Department had sent a notice under Section 143(2) of Income Tax Act, 1962 (hereinafter 'IT Act'). What is of utmost significance is, this notice sent by the IT Department under Section 143(2) of IT Act, pursuant to the returns filed for assessment year 2016-2017 is addressed to the writ petitioner describing him as the legal heir of late Kanniappan Thiruvengadam, but ultimately, when the assessment was carried to its logical end and when it culminated in the impugned assessment order, the same has been issued in the name of deceased Kanniappan Thiruvengadam. On this basis, it is submitted by learned counsel for writ petitioner that the impugned assessment order is a nullity. In other words, the entire writ petition is predicated on the pivotal and primordial ground that impugned assessment order has been made in the name of a dead person and is therefore a nullity.

9. In response to the aforesaid challenge to the impugned assessment order, learned Revenue Counsel adverting to the aforementioned counter-affidavit submitted that the response of the respondent is of three fold and they are as follows:

(a) Impugned assessment order



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once again in the name of dead person only. Therefore, it is contended that the impugned assessment order cannot be sustained in the eye of law.

4. The learned counsel for the petitioner further contended that even though a statutory appeal was filed on 07.01.2019 against the assessment order, since the very order of assessment cannot be sustained on the sole reason that the same was passed against the dead person, pursuing such appeal on merits of the assessment before the Appellate will be futile and therefore, the petitioner is willing to withdraw the said appeal.

5. Perusal of the notice dated 27.11.2018 and the reply submitted by the petitioner, more particularly, the one dated 26.12.2018, which was duly acknowledged by the Department on 26.12.2018 itself, would show that the Assessing Officer has proceeded with the assessment proceedings against the dead person and consequently, passed the assessment order also on 28.12.2018 in the name of such dead person. Hence, this Court prima facie finds that such order passed on the dead person cannot be sustained. Therefore, this Court is inclined to examine the said issue further. Since the petitioner has undertaken to withdraw the appeal already filed before the Appellate Authority, the said submission is recorded and the respondent is directed to file counter within a period of three weeks.

6. Considering the above stated facts and circumstances, there will be an order of interim stay of the impugned proceedings, pending further orders.'

(Underlining made by this Court to supply emphasis and highlight)

12. To be noted, vide the aforesaid proceedings of this Court, interim order has also been granted.

13. Owing to the aforesaid proceedings, particularly, the underlined portion, writ petitioner counsel submits that the writ petitioner withdrew the statutory appeal by filing a memo dated 25.2.2019 and the CIT Appeals accepted the same on 28.2.2019. It was pointed out that the counter-affidavit of the respondent has been filed only on 17.6.2019.



Therefore, withdrawal of the statutory appeal by the writ petitioner is pursuant to the orders and proceedings of this Court made by predecessor Hon'ble Judge and therefore, the alternate remedy plea pales into insignificance.

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14. With regard to the first of the threefold submissions pertaining to software, suffice to say that it is for the Income Tax Department to update data software to make allowance for such situations. In the considered view of this Court, such situations may not be infrequent and isolated. In other words, situations wherein returns are filed post demise of the assessee by legal heir are common situations and therefore, it is for the Income Tax Department to ensure that adequate updation is made in the software in this regard. That puts an end to the first of the threefold submissions pertaining to software.

15. This leaves us with the second of the threefold submissions i.e., that which turns on Section 292-B of IT Act on the basis of which learned Revenue Counsel submits that it is a curable defect.

16. Learned counsel for writ petitioner pressed into service some orders to say that this Court has held that proceedings against a dead person are nullity, but learned Revenue Counsel says that these orders are distinguishable on facts as they pertain to notices whereas the instant writ petition is one assailing an assessment order made under Section 143(3) of IT Act. In the considered view of this Court, it may not be necessary to delve into those aspects of the matter further and it would serve the purpose to direct the respondent to redo the assessment in the name of the writ petitioner on merits of the returns and in accordance with law.

17. In the considered opinion of this Court, this will safeguard the interest of the writ petitioner (assessee's legal heir) as well as protect the interest of the Revenue.

18. It was contended by learned Revenue Counsel that all that needs to be done is, the impugned assessment is to be made in the name of the writ petitioner or in other words according to learned Revenue Counsel in impugned assessment order name of late assessee Kanniappan Thiruvengadam has to be replaced with the name of the writ petitioner, namely, T.Palani. This Court is of the considered view that this is untenable as it would lead to a proposition that a decree can be obtained against a dead person and the name of the judgment-debtor alone can be changed to that of the legal heir. No elucidation or elaboration is required to highlight that such a proposition is clearly not tenable.



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19. Therefore, in the light of the narrative thus far, this Court deems it appropriate to set aside the impugned assessment order being assessment order dated 28.12.2018 bearing Order No.ITBA/AST/S/143(3)/2018-19/1014624990(1) pertaining to PAN No.ABNPT3323R for the assessment year 2016-2017 and the respondent is directed to redo the assessment after putting the writ petitioner on notice. Respondent so redoing the assessment shall be on merits of the returns filed on 30.9.2016 and obviously in accordance with law. To be noted, the impugned assessment order is set aside without expressing any opinion on merits of the matter or in other words, the impugned assessment order is set aside on the sole ground that it has been made in the name of a dead person, for the limited purpose of facilitating the respondent to redo the matter.

20. Writ petition is disposed of with the above directions. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

Svn

To

Assistant Commissioner of Income Tax,
Non-Corporate Circle-10(1),
Nungambakkam,
Chennai-34.

+1cc to Mr.P.J.Rishikesh, Advocate sr.65271

W.P.No.2531 of 2019

ks(co)
nr 18/09/2019