IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :08.07.2019

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

W.P.No.6547 of 2019
and
W.M.P.No.7365 of 2019

C.Naveen Kumar ..Petitioner

vs

The Income Tax Officer,
Ward-3, Officers Line,
No.3, Barracks Road,
Vellore. ..Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to impugned order dated 26.12.2018 passed by the Respondent, quash the same consequently direct the respondent not to initiate any penalty proceedings under Section 27/(1)(c) of Income Tax Act, 1961 or any other provision of law under Income Tax Act, 1961 and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

For Petitioner : Mr.N.Poovanalingam

For Respondent : Mr.J.Narayanaswamy
Senior standing counsel

O R D E R

Mr.N.Poovanalingam, learned counsel on record for writ petitioner and Mr.J.Narayanaswamy, learned Senior standing counsel for Income Tax on behalf of the lone official respondent are before this Court.

2. With consent of learned counsel on both sides, main writ petition is taken up, heard out and is being disposed of.

3. This is an unfortunate case, where fate has overtaken normal time lines and normal life trajectories.

4. The writ petitioner before this Court is 24 years of age and he is pursuing his Master's degree(M.Tech).

5. Subject matter of this writ petition arises under the 'Income Tax Act, 1961' [hereinafter 'IT ACT' for brevity]. This writ petition pertains to Assessment Year 2010-2011 [hereinafter 'said AY' for brevity].

6. There is no disputation or disagreement before this Court that qua said AY, writ petitioner was a minor and he was barely 16 years of age.

7. As mentioned in the prefatory paragraph of this order, this is a case where fate has overtaken the normal time lines and life trajectories of Nature.

8. This is a case where writ petitioner's father died suddenly on 06.06.2018 at the age of 47.

9. Prior to writ petitioner's father's untimely demise on 06.06.2018, writ petitioner's father Mr.S.Chandrasekar was visited with a notice from the respondent under Section 148 of IT Act regarding said AY.

10. Thereafter, post untimely demise of writ petitioner's father on 06.06.2018, the department issued a notice to the writ petitioner on 30.10.2018 under Section 147 of IT Act qua said AY stating that there is a scrutiny assessment proceedings under Section 143(2) read with Section 147 of IT Act and calling upon him to produce certain documents. On receipt of this notice, writ petitioner was all at sea as according to him, he had no clue whatsoever about the business activities of his father and was completely in the dark other than knowing that he was dealing in edible oil in the name and style of 'Gajalakshmi Oil Traders'.

11. Writ petitioner, having been visited with the aforesaid 30.10.2018 notice under Section 147 of IT Act, sent a reply dated 23.11.2018, explaining his predicament, which has been captured and adumbrated as 8 points. This Court deems it appropriate to extract and reproduce relevant portion of the reply from the writ petitioner and the same reads as follows:

> 'In regard to the same I wish to admit the following facts for your kind perusal.
>
> i) The Scrutiny Assessment initiated for the Assessment year 2011-2012 pertains to my Father, who had died on 6th June 2018 due to massive cardiac attack.
>
> ii)I am responding to this notice, since the same was addressed on my name.

iii) During the Assessment Year 2011-12, I was doing my schooling and presently persuing my M.Tech degree.

iv) My mother is a renal failure patient since more than a year and taking treatment at our native with the support of our grandparents.

v) In general my father never used to discuss any business information neither to me nor to my mother being me a school going child and my mother is already with illness.

vi) He was not so open to discuss any of his personal and business activities with us; but we were able to see, so often few of his business suppliers used to pressure him for payments for their business activities.

vii) Even on the few days later to the funeral few people took over the available materials lying at our father's shop claiming that it is of them. The owner of the premises, where my father was doing his oil trading business taken away the waste materials and furniture and had his own vacant possession. Since we doesn't know what is happening around us while we were so depressed on our father's sudden demise.

Viii) My father expired at his age of 47 years who left us with Blank life environment, either my Father, mother or myself don't possess any property and even today me and my mother are struggling for our day to day survival.

In order to explain these facts I came in person and met your good self in person, the ITO was not able to accept my presence for not bringing any financial papers. At this juncture I don't know how to proceed further in this regard.'

12. It is submitted that after this reply, the writ petitioner was called upon to go over the office of the respondent on 17.12.2018. This is vide notice dated 10.12.2018. As the trail of ill luck would have it, this Court is informed that the writ petitioner's mother died on 16.12.2018, cremation was on 17.12.2018 and therefore, the writ petitioner could not attend the hearing on 17.12.2018. Under the aforesaid circumstances, writ petitioner has now been visited with a 'Show Cause Notice' ['SCN' for brevity] dated 26.12.2018 bearing reference PAN. ALPPC0202L/2018-19, which shall hereinafter be referred to as 'impugned SCN' for clarity and convenience. Annexures to the impugned SCN is an Assessment Order also dated 26.12.2018 qua said assessment year, wherein income tax was assessed at Rs.25,62,337/-. Income Determined under Section 144 of the IT Act at Rs.90,27,790/-. Added to it, is Education cess besides interests under Sections 234A and 234B, and the total payable amount is at Rs.73,89,770/-.

13. What is of utmost importance is the positive and emphatic assertion of the writ petitioner that he has not inherited any property, cash deposits or movables from his father. This is articulated in ground (f) of the affidavit filed in support of the writ petition and the relevant portion of ground (f) reads as follows:

> 'f. The respondent failed to note that the petitioner has not inherited any property, cash deposits or movables from his deceased father Mr.S.Chandrasekar.'

14. Though not articulated in the counter affidavit being counter affidavit dated 31.05.2019, learned Revenue counsel submitted that there were certain transactions in the Bank Account held by the writ petitioner's father, which was the trigger for the aforesaid proceedings qua said AY.

15. As there is no mention about the Bank Account in the counter affidavit, learned Revenue counsel took instructions and submitted that details of the aforementioned Bank Account of the writ petitioner's father are as follows:

'A/c No:12451930001835
HDFC Bank
22, 7th East Cross, Gandhi Nagar,
Katpadi, Vellore
IFSC : HDFC0001245'

16. It is submitted that there was a sudden spurt in deposits and large sums of money were deposited by writ petitioner's father during the said AY, which was the trigger for the entire proceedings.

17. This takes us to the impugned SCN. To be noted, impugned SCN has been impugned along with the annexed assessment order, which has been adverted to supra.

18. This in turn takes us to the question as to the extent to which a legal representative of an assessee can be proceeded against and the limitations if any, in this regard. Liability of legal representatives in such situations is adumbrated in Section 159 of the IT Act which in turn is under Chapter XV captioned 'LIABILITY IN SPECIAL CASES' and A thereunder is captioned 'Legal Representatives'.

19. Most relevant paragraph is Sub Section 6 of Section 159 of IT Act and the same reads as follows:

'CHAPTER XV
LIABILITY IN SPECIAL CASES
A.- Legal representatives

Legal representatives.
159. (1)................
(2)................
(3)................
(4)................
(5)................
(6)The liability of a legal representative under this section shall, subject to the provisions of sub-section (4) and sub-section(5), be limited to the extent to which the estate is capable of meeting the liability.'

20. There is no disputation or disagreement that the liability of a legal representative under the IT Act is limited to the extent to which the estate is capable of meeting the liability. To be noted, writ petitioner has not inherited anything from his father and he has/had nothing to do with his father's aforementioned bank account is learned counsel's say.

21. Owing to the peculiar facts and circumstances of this case, with a rider that this case shall not be cited as a precedent, the following order is passed:

a) Impugned SCN dated 26.12.2018 bearing reference PAN. ALPPC0202L/2018-19 and the impugned assessment order also dated 26.12.2018 are set aside.

b) The statement made on oath i.e ., affidavit filed in support of the writ petition by the writ petitioner that he has not inherited any assets and deposits from his father(assessee) particularly ground (f), which has been extracted and reproduced supra is recorded.

c) It is open to the respondent to proceed against the aforesaid Bank Account bearing A/c No:12451930001835, HDFC Bank, 22, 7th East Cross, Gandhi Nagar,Katpadi, Vellore, IFSC : HDFC0001245 and any other assets of the assessee (writ petitioner's father), if unearthed and if it comes to light or surfaces in future.

22. This writ petition is disposed of with the above said directions. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

To

The Income Tax Officer,
Ward-3, Officers Line,
No.3, Barracks Road,
Vellore.

+1 CC to Mr.J.Narayanaswamy, Advocate sr 58204.
+2 Ccs to Mr.N.Poovanalingam, Advocate sr 57276.

W.P.No.6547 of 2019
and
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NRL(CO)
SP(08/08/2019)