IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.02.2019

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.No. 5367 of 2019 &
WMP.Nos.6096 & 6097 of 2019

Narayanasamy Viswanathan ...Petitioner

Vs

Income Tax Officer, Ward-5,
Income Tax Officer, DP Thottam
Behind Ananda Inn, MG Road
Puducherry (UT) - 605003. ....Respondent

....

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari or any other appropriate writ application or order under Article 226 of the Constitution of India calling for the records on the file of the Respondent in PAN:AEJPV7187C for the Assessment Year 2011-12 in passing the impugned assessment order under section 144 read with section 147 of the Income Tax Act, 1961 dated 13.12.2018 and quash the same as illegal, arbitrary and bad in law.

For Petitioner : Mr. V. Prakash, Senior Counsel
for M.Kaviveerappan

For Respondent : Mr. Jaya Prathap, Standing Counsel

O R D E R

Mr. Jaya Prathap, Standing Counsel appears for the respondent. By consent of both parties, this Writ Petitioner is disposed of at the stage of the admission.

2. The writ petitioner has assailed an order of re-assessment dated 13.12.2018 passed exparte in terms of section 144 read with section 147 of the Income Tax Act, 1961 (in short the 'Act') for assessment year 2011-12 .

3. The proceedings for re-assessment appear to have been initiated since the Assessing Authority had received data to the effect that immovable properties amounting to Rs.1,30,37000/- had been sold and no return of income has been filed by the assessee offering the capital gains from the sale of property to tax.

4. The order of assessment is very categoric and states that no return of income was filed by the assessee nor was there response to any of the notices issued for determining the total income. Income has been assessed at Rs.1,16,24,412/- and a notice was issued calling for objections to the proposal.

5. Mr. V. Prakash, learned Senior Counsel for Mr. M.Kaviveerappan, learned counsel for the petitioner submits that a First Information Report had been lodged on 30.07.2018 against the petitioner for offences under the provisions of the Indian Penal Code. Pursuant thereto, the petitioner had been in Chennai making efforts to obtain anticipatory bail from the High Court.

6. A copy of an order of this Court dated 16.11.2018 in Criminal Original Petition No.26678 of 2018 has been placed on file, where anticipatory bail has been granted to the petitioner for offences under sections 302, 341 and 109 of the Indian Penal Code, upon condition that the petitioner appear before the learned Judicial Magistrate, Vanur on all working days at 10:30 am until further orders, failing which the order of anticipatory bail would stand revoked.

7. According to the learned Senior Counsel, it is on account of the pre-occupation of the petitioner to obtain bail and thereafter to comply with the bail conditions imposed that he had been unable to co-operate and assist the respondent in completion of assessment proceedings.

8. The bail conditions were relaxed from January 2019 and it was only at this juncture that the petitioner returned to his residence finding that a show cause notice under section 144 of the Act had been served by affixture. The petitioner thereafter contacted the assessing officer and was furnished a copy of the impugned order of assessment. On merits, the petitioner states that the land sold was agricultural in nature and the income from the sale thereof does not attract liability to capital gains tax.

9. In the facts and circumstances of the case, as noticed above, I am of the view that the absence of the petitioner during the assessment proceedings was for genuine reasons. In the interests of justice, I set aside the impugned assessment

order and direct another opportunity to be afforded to the petitioner by the assessing officer prior to completion of assessment.

10. The petitioner shall appear before the respondent/Income Tax Officer, Ward-5, Income Tax Officer, DP Thottam, Puducherry (UT) -605003 on 06.03.2019 at 2:30 pm with all materials in support of his claim. The assessment shall be completed within a period of two (2) weeks from the date of conclusion of personal hearing.

11. Accordingly, Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mrn

To

The Income Tax Officer, Ward-5,
Income Tax Officer, DP Thottam
Behind Ananda Inn, MG Road
Puducherry (UT) - 605003.

+1 cc to M.Kaviveerappan, Advocate, S.R.No.17168

W.P.No. 5367 of 2019 &
WMP.Nos.6096 & 6097 of 2019

RSK(CO)
SSM(28/02/2019)