IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2019

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THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.27245 of 2019
and
WMP.No.26654 of 2019

Manjula Athur
W/o.Athur Balamuni Reddy ...Petitioner

vs.

The Income Tax Officer
Non-Corporate Ward 13(5)
Room No.402, 4th Floor,
Annexe Building, Aayakar Bhawan
No.121, Nungambakkam High Road,
Chennai-600 034. ...Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records in PAN:AVPPM6061K/2013-2014 dated 22.01.2019 relating to the assessment year 2013-2014 on the file of the respondent and quash the same.

For Petitioner : Mr.M.P.Senthilkumar

For Respondent : Mr.J.Narayanaswamy
Senior Standing Counsel (IT)

O R D E R

Mr.J.Narayanaswamy, learned Senior Standing Counsel (IT) takes notice for the respondent. By consent of both the parties, the writ petition is taken up for final disposal at the admission stage itself.

2. This writ petition is filed challenging the order of assessment dated 22.01.2019 relevant to the assessment year 2013-2014.

3. The petitioner is an Assessee under the respondent. In respect of the assessment year 2013-2014, the petitioner filed the returns of income on 30.12.2014. However, the Assessing Officer issued notice dated 08.06.2016 under Section 148 of the Income Tax Act, 1961, for reopening the assessment. The petitioner challenged the reopening by filing a writ petition in

W.P.No.33318 of 2017 and this Court, disposed of the said writ petition on 27.02.2018, by directing the Assessing Officer to furnish the reasons for reopening and also, by granting liberty to the petitioner to file her objections/reply on such reasonings. Thereafter, the Assessing Officer furnished the reasons for reopening. The petitioner filed her objections against the reasons for reopening. Thereafter, the Assessing Officer rejected the objections through proceedings dated 25.04.2018 and the same was put to challenge before this Court in WP.No.19746 of 2018. This Court, by order dated 24.08.2018 has dismissed the said writ petition. Thereafter, the present impugned order of assessment was passed on 22.01.2019.

4. The learned counsel for the petitioner submitted that the impugned order was passed without providing sufficient opportunity to the petitioner to furnish her objections or details. It is stated that the petitioner was bedridden at the relevant point of time and she was not in a position to attend the hearing fixed by the Assessing Officer. Thus, the learned counsel contended that the petitioner is having all the relevant materials and therefore, she may be permitted to go before the Assessing Officer and produce the materials so as to enable him to pass fresh order of assessment on consideration of such materials.

5. Per contra, the learned Senior Standing Counsel appearing for the respondent submitted that the petitioner was provided with sufficient opportunity to place the material details before the Assessing Officer on more than one occasion and therefore, she cannot complaint, as if she was not provided with sufficient opportunity. Therefore, he contended that, as the petitioner has not come forward with any material details, the Assessing Officer has rightly passed the order of assessment. He further submitted that the petitioner can always challenge the said order by filing an appeal before the Appellate Authority and therefore, this Court need not entertain the present writ petition.

6. Heard both sides and perused the materials placed before this Court.

7. The impugned order of assessment was passed in pursuant to reopening of the assessment for the relevant assessment year 2013-2014. The petitioner had already approached this Court on two occasions, one immediately, on receipt of notice for reopening and another after rejection of the objections raised against the reasons for reopening. Though the petitioner succeeded in her first attempt, where, this Court has directed the Assessing Officer to furnish the reasons and consider the objections of the petitioner and thereafter, to pass the order, whereas, in the second attempt, challenging the order rejecting

her objection for reopening, has not been successful, as this Court has dismissed the writ petition as stated supra. Therefore, the Assessing Officer has rightly proceeded to pass the order of assessment. The question now to be answered is whether the petitioner was provided with sufficient opportunity or not before passing the order of assessment.

8. Perusal of the impugned order of assessment shows that for five occasions, the matter was adjourned for the appearance of the Assessee and however, the Assessee failed to appear and not furnished any material details either in person or through authorized representative. Therefore, the Assessing Officer has completed the assessment and passed the impugned order. When such being the factual position, I do not think that the petitioner is entitled to canvass the correctness or otherwise of the impugned order by filing the present writ petition only by stating that she is having all the materials and therefore, she must be permitted to get the matter reopened by the Assessing Officer. I am not inclined to accept the said request, as the petitioner can very well raise all the contentions before the Appellate Authority by filing regular appeal, since such authority is also a fact finding authority.

9. Therefore, without expressing any view on the merits of the matter, this Writ Petition is disposed of, only by granting liberty to the petitioner to work out her remedy by filing an appeal before the Appellate Authority within a period of two weeks from the date of receipt of a copy of this order. If any such appeal is filed within the time stipulated herein, the concerned Appellate Authority shall take up the matter and decide the same on merits and in accordance with law, without reference to the period of limitation. It is open to the petitioner to seek for interim relief during pendency of the appeal and if any such interim application is filed by the petitioner, the same shall be considered by the concerned Appellate Authority on merits and in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-V)

//True copy//

Sub Assistant Registrar

mk

To

The Income Tax Officer
Non-Corporate Ward 13(5)
Room No.402, 4th Floor,
Annexe Building, Aayakar Bhawan
No.121, Nungambakkam High Road,
Chennai-600 034.

+1cc to Mr.J.Narayanaswamy, Advocate SR.No.79806

+1cc to Mr.G.Baskar, Advocate SR.No.78700

W.P.No.27245 of 2019

PVS(CO)
GMY(11/10/2019)