IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.10.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.12761 of 2019
and
W.M.P.No.12976 of 2019

S.Mahesh ...Petitioner

vs.

The Income Tax Officer
Ward-1(5), Tiruppur. ...Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent leading to passing of assessment order dated 26.12.2018 and quash the same and direct the respondent to pass re-assessment order afresh after affording an opportunity to the petitioner.

For Petitioner : Mr.S.Sathyanarayanan
For Respondents : Mr.A.P.Srinivas
Senior standing counsel

O R D E R

This writ petition is filed challenging the order of assessment dated 26.12.2018 passed under Section 144 r/w 147 of the Income Tax Act, 1961. The relevant assessment year is 2010-2011.

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

3. It is seen that the Assessing Officer believed the income escaped the assessment relevant to the subject matter assessment year and wanted to reopen the

assessment under Section 147 of the Income Tax Act, 1961. Accordingly, the notice under Section 148 of the Income Tax Act, 1961 dated 31.03.2017 was issued to the Assessee. Though it is claimed by the Assessee that no such notice was served on him, the counter filed by the respondent in clear and categorical terms states that all the notices, letters and assessment orders along with demand notices etc., were sent to Atthamppampalayam Pudur, Velampalayam, Kangeyam, Tirupur District, as per the address shown in the Assessee's Pan database and also provided by the Karnataka Bank Ltd., from their records.

4. The learned counsel for the petitioner is not disputing the fact that the address referred to in the counter is the address referred to in the Pan card of the petitioner.

5. When such being the factual position, I do not think that the petitioner is entitled to question the consequential assessment order without filing any objection to the notice for reopening and thereafter, participating in the assessment proceedings by raising all the contentions. Now, the petitioner seeks to raise some contentions on merits of the assessment by placing some factual aspects of the matter.

6. I do not think that this Court can look into those contentions and express any view, when admittedly, as against the impugned order, the petitioner has a right to file an appeal before the concerned Appellate Authority, where he can raise all the points and contest the matter. Considering the fact that the petitioner has not filed any reply to the notice for reopening the assessment and also the show cause notice for completion of the assessment dated 12.11.2018, this Court is not inclined to entertain this writ petition to decide the matter on merits. On the other hand, this Court is of the view that granting liberty to the petitioner to work out his remedy by filing statutory appeal before the concerned Appellate Authority, would meet the ends of justice.

7. Accordingly, without expressing any view on the merits of the claim made by both parties, this Writ Petition is disposed of, by permitting the petitioner to file such an appeal before the concerned Appellate Authority within a period of two weeks from the date of receipt of the copy of the order. If any such appeal is filed, the same shall be considered and appropriate

orders shall be passed on merits and in accordance with law, without reference to the period of limitation. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

mk
To

The Income Tax Officer
Ward-1(5), Tiruppur.

Copy to
The Section Officer,
ER Section,
High Court, Chennai.

+1cc to Mr.S.Sathyanarayanan , Advocate SR.No. 89884
+1cc to Mr.A.P.Srinivas , Advocate SR.No. 89500

W.P.No.12761 of 2019

A.SK(22/11/2019)