IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :19.08.2019

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THE HON'BLE MR.JUSTICE M.SUNDAR
W.P.No.19648 of 2019
and
W.M.P.No.19177 of 2019

A.Mathialagan ..Petitioner

vs

1.The Principal Commissioner of Income Tax-1,
Income Tax Department,
Chennai.

2.The Income Tax Officer,
Non-Corporate Ward 22(3)
Tambaram,
Chennai.

3.The Income Tax-Officer,
Corporate Ward-1(2),
Chennai – 600 034. .Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the assessment order passed by the 1st respondent bearing C.No.217/264/Pr.CIT-1/2017-18, dated 4.3.2019 and confirming the assessment order passed by the 2nd respondent dated 29.12.2017 and quash the same and directing the respondents to re-assess the income of the petitioner, for the assessment year 2011-12 after giving an opportunity to him, and pass such further or other orders as the Honourable Court may deem fit and proper in the circumstances of the case and thus render justice.

For Petitioner : Mr.T.N.Rajagopalan
For Respondents : Ms.Hema Muralikrishnan
Senior Standing counsel
(Income Tax)
for R1 to R3

O R D E R

Mr.T.N.Rajagopalan, learned counsel for writ petitioner and Ms.Hema Muralikrishnan, learned Senior Standing counsel (Income Tax) on behalf of the three respondents 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. An order dated 04.03.2019 bearing reference C.No.217/264/Pr.CIT-1/2017-18 (hereinafter 'impugned order' for brevity) made by the 1st respondent in the instant writ petition has been called in question.

4. Impugned order has been made by 1st respondent under Section 264 of 'Income Tax Act, 1961' ['IT Act' for brevity]. To be noted, section 264 of IT Act provides for revision and in the instant case, an assessment order dated 29.12.2017 qua the writ petitioner for the Assessment Year 2011-2012 was sought to be revised vide a revision application filed before the 1st respondent on 25.06.2018 and the impugned order came to be passed in this revision application.

5. There is no disputation or disagreement before this Court that the power of revision vested in the 1st respondent shall be exercised either on his own motion or on an application by the assessee. To be noted, in the instant case, it is the latter. Vide Sub Section 3 of Section 264 of IT Act, revision application should have been made by the assessee within one year from the date on which the assessment order sought to be revised was communicated to the writ petitioner. In the instant case, the exact date on which the aforesaid assessment order dated 29.12.2017 was served on the writ petitioner is not readily available. However, even if it is construed from the date of order itself i.e., 29.12.2017, the revision application was filed well within one year i.e., on 25.06.2018 to be precise. It emerges clearly that, the revision application under Section 264 of IT Act filed by the assessee is within time vide Section 264(3) of IT Act and therefore, there was no delay.

6. Be that as it may, though it is not statutorily imperative to afford an opportunity of personal hearing in all cases under Section 264, there is no impediment in the 1st respondent deciding to give an opportunity of personal hearing at his discretion depending on the facts and circumstances of a case. This is more so, as Section 264 makes it clear that for passing an order under this provision, the 1st respondent shall cause such enquiry to be made. Such enquiry can either be made by the 1st respondent himself or he can cause the same to be made. In the instant case, though it is not statutorily imperative as there is no impediment, the 1st respondent has chosen to give an opportunity of personal hearing. From the case file placed before this Court, it comes to light that 1st respondent has fixed the personal hearing on 14.12.2018 at 4.00 p.m in his office and has sent a communication to the writ petitioner regarding this on 03.12.2018. In this communication, writ petitioner was also directed to file written submissions and an affidavit saying that he would not be preferring an appeal against the assessment order dated 29.12.2017, which is sought to be revised. To be noted, this condition of the assessee, not filing an appeal against the order that is sought to be revised is a condition precedent for entertaining a revision.

7. To this communication dated 03.12.2018, writ petitioner has sent a reply letter dated 11.02.2019 and in this letter, writ petitioner has highlighted two aspects of the matter. One is that the writ petitioner was indisposed and was in bed rest. The other aspect is that the writ petitioner has sought condonation of delay in filing a revision petition, which was filed on 25.06.2018, which as mentioned supra, is well within the stipulated one year.

8. As already alluded to supra, there is no delay in the revision application filed by the writ petitioner on 25.06.2018 and it was wholly unnecessary for the writ petitioner to seek condonation of delay. All that was required on the part of the writ petitioner was to file an affidavit to the effect that he is not filing an appeal and attended the personal hearing on 14.12.2018, but that was not to be.

9. What transpired thereafter, has now become the central theme of the instant writ petition. Thereafter, the 1st respondent, has taken up the aforementioned reply letter dated 11.02.2019 from the writ petitioner, treated the same as a petition for condonation of delay and has passed the impugned order. A perusal of the impugned order, more particularly, paragraph No.2 reveals that the 1st respondent has also articulated in the impugned order itself that the writ petitioner assessee has pleaded for condonation of delay on medical grounds. The 1st respondent has held that delay condonation is accepted. If writ petitioner seeking condonation of delay was not necessary, this exercise was equally unnecessary. The first page of impugned order which gives particulars which gives basic details regarding revision also mentions 'Petition for condonation of delay filed on 11.02.2019'. Delay condonation prayer having been acceded to, writ petitioner was awaiting further communication fixing a personal hearing for main revision (as 1st respondent Revisional Authority has in his discretion chosen to give personal hearing in this case) is learned writ petitioner counsel's say.

10. Learned Revenue counsel, pointed out that the 03.12.2018 communication referred to supra is a second reminder and the writ petitioner has not been diligent in pursuing his revision application.

11. In such a backdrop / trajectory of the revision application, learned counsel for writ petitioner submitted that if a personal hearing is now fixed, writ petitioner would go before the 1st respondent with the required affidavit i.e., affidavit saying that writ petitioner is not filing an appeal against the assessment order 29.12.2017, submit his written submissions, participate in the personal hearing and invite an order afresh from the 1st respondent.

12. Considering the peculiar facts and circumstances of the case and more particularly, obvious error that has occurred in the impugned order, wherein a petition for condonation of delay has been taken up when there was no

delay, this Court deems it appropriate to set aside the order with a direction to the 1st respondent to hold personal hearing on a specified date, time and venue and dispose of the matter afresh.

13. Before that, it is to be noticed that even if there was a delay condonation petition, on condonation of delay, it would have been appropriate to communicate a date of personal hearing for main matter in cases where Revisional authority at his discretion chooses to give a personal hearing.

14. At the risk of repetition, it is reiterated that this is a case, where 1st respondent has chosen to give an opportunity of personal hearing at his discretion though it is not statutorily imperative. Therefore, the following order is passed:

(a) Impugned order bearing reference C.No.217/264/Pr.CIT-1/2017-18 dated 04.03.2019 made by the 1st respondent is set aside. It is made clear that impugned order is set aside on the ground that it has erroneously taken up a petition for condonation of non-existent delay, condoned the same and passed orders on merits. In other words, no opinion is expressed on the merits of the matter.

(b) As personal hearing has already been afforded to the writ petitioner, personal hearing is now fixed on 04.09.2019 (Wednesday) at 4.00 p.m in the office of the 1st respondent. Writ petitioner undertakes to attend the personal hearing without fail. In the personal hearing, on 04.09.2019, writ petitioner also undertakes to file an affidavit regarding not filing an appeal, file written submissions / supporting material and prescribed fee before the 1st respondent.

(c) After personal hearing, the 1st respondent shall dispose of the revision application filed on 25.06.2018 as expeditiously as possible and in any event within four(4) weeks from the date of the personal hearing.

(d) If the writ petitioner does not avail of the personal hearing on 04.09.2019, it is open to the 1st respondent to proceed with the revision petition and pass orders afresh without further communication and or without further affording opportunities of personal hearing.

(e) Either way, the orders passed on the revision petition shall be communicated to the writ petitioner under due acknowledgment within seven (7) working days from the date on which the order is passed.

15. This writ petition is disposed of with above directions. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(co)

//True Copy//
Sub Assistant Registrar

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To

1.The Principal Commissioner of Income Tax-1,
Income Tax Department,Chennai.

2.The Income Tax Officer,
Non-Corporate Ward 22(3)
Tambaram, Chennai.

3.The Income Tax-Officer,
Corporate Ward-1(2),
Chennai - 600 034.

+1cc to Mr.T.N.Rajagopalan , Advocate SR.No. 71392
+1cc to M/s.Hema Muralikrishnan , Advocate SR.No. 70713

A.SK(24/09/2019)