IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.09.2019

CORAM

THE HONOURNABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.No.26091 of 2019
and
W.M.P.No.25462 of 2019

Ajji Basha ..Petitioner

Vs.

1. Commissioner of Income Tax
(Appeals)-7,
121, Uthamar Gandhi Salai,
Chennai - 600 034.

2. The Assistant Commissioner of Income tax,
Corporate Circle 4(1)
121, Uthamar Gandhi Salai,
Chennai - 600 034. .. Respondent s

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records on the file of the first respondent and quash the order passed in TA.96/CIT(A)-7/2018-19 dated 28.06.2019 for the assessment Year 2016-17 as illegal and against the principles of natural justice and fair play and direct the first respondent to provide opportunity of hearing in the appeal filed against the assessment order in AFKPA1737R dated 18.12.2018.

For Petitioner : Mr.N.V.Balaji

For Respondents: Mrs.Hema Muralikrishnan,
Senior Standing Counsel

O R D E R

This writ petition is filed challenging the order of the first respondent dated 28.06.2019.

2. For the assessment year 2016-17, an order of assessment was passed by the Assessing Officer on 18.12.2018 under Section 143(3) of the Income Tax Act, 1961. Challenging the said order, the petitioner presented an appeal before the First Appellate Authority/ First respondent herein on 18.01.2019. The First Appellate Authority disposed of the appeal on 28.06.2019, the

order impugned in this writ petition, thereby dismissing the Appeal. The main ground raised in this Writ Petition against the order of the Appellate Authority is that the same was passed in total non-application of mind and without providing an opportunity of hearing. It is also contended that it is a non-speaking order and thus, cannot be sustained.

3. Learned counsel for the petitioner reiterated the above contentions and thus, submitted that the impugned order cannot be sustained on any account.

4. The learned Senior Standing Counsel for the respondents though contended that as against the impugned order, further appellate remedy is available to the petitioner, she is however, fair enough to admit the position that the first respondent has not given any independent reasons and findings for dismissing the appeal.

5. Heard Mr.N.V.Balaji, learned counsel for the petitioner and Mrs.Hema Muralikrishnan, the learned Senior Standing Counsel for the respondents and perused the materials placed before this Court.

6. Being aggrieved against the order of assessment passed by the Assessing Officer, the petitioner went on appeal. The first respondent is the appellate authority. Needless to state that the Appellate Authority is also a fact finding authority and therefore, he has to consider the order of assessment on the grounds raised in the appeal and thereafter, pass a speaking order on merits and in accordance with law by giving his own reasons and findings as to whether the order of assessment can be sustained or not. In other words, the order passed by the Appellate Authority should explicitly exhibit his application of mind to the facts and circumstances and the objections raised in the grounds of appeal, also by expressing his reasons and findings in support of his conclusion.

7. In this case, the Appellate Authority, after extracting the order of the Assessing Officer in full, has not given any other reason or finding to dismiss the appeal except by stating that he is of the considered view that the Assessing Officer's order is a self speaking order and does not call for any interference. In my considered view, such single line finding of the Appellate Authority, cannot be sustained as a proper exercise of the Appellate Authority, while disposing the appeal. Therefore, it is apparent that the order impugned in this writ petition is an outcome of total non-application of mind. Consequently, the impugned order cannot be sustained. It is further contended that before passing the order, the petitioner was not heard.

8. Considering all the facts and circumstances, this Writ Petition is allowed and the impugned order is set aside and the matter is remitted back to the first respondent for passing fresh order on merits and in accordance with law, after giving an opportunity of hearing to the petitioner. Needless to state that the fresh order to be passed by the appellate authority shall be a speaking order with reasons and findings. It is also made clear that this Court is not making any view on the merits of the claim made by the petitioner as it is for the appellate authority to consider and decide. The Appellate Authority shall pass such order as directed supra within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

vsi

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
1. The Commissioner of Income Tax
(Appeals)-7,
121, Uthamar Gandhi Salai,
Chennai - 600 034.

2. The Assistant Commissioner of Income tax,
Corporate Circle 4(1)
121, Uthamar Gandhi Salai,
Chennai - 600 034.

+1cc to Mr.N.V.Balaji, Advocate, SR.No.78193
+1cc to Mrs.Hema Muralikrishnan, Advocate, SR.No.77648

W.P.No.26091 of 2019

Kak(30/09/2019)