IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 09.01.2020
CORAM
THE HON'BLE MR. JUSTICE C. SARAVANAN
W.P.No.300 of 2020
and
WMP.Nos.343 and 344 of 2020

The Bhavani Kudal Co-opearative Urban Bank Ltd.,
Rep by its General Manager
Thiru V.Palanisamy
s/o.Thiru S.Velusamy
Post Box.No.30/215,
Main Road Bhavani,
Erode - 638 301. ... Petitioner

vs.

The Assistant Commissioner of Income Tax
Circle - 2,
Erode Income Tax Office,
No.15, Gandhiji Road,
Erode - 638 001. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying, for the issuance of Writ of Certiorari to call for the records in ITBA/AST/S/143(3)/2019-20/1022972546(1) dated 24.12.2019 on the file of the respondent relating to A.Y.2017-18 and quash the same.

For Petitioner : Mr.G.Baskar.
For Respondent : Mr.A.P.Srinivas,
Standing Counsel for respondent.

ORDER

The petitioner has impugned the assessment order dated 24.12.2019 under Section 143(3) of the Income Tax Act.

2. The petitioner had filed Income Tax Returns on 13.09.2017, wherein huge transaction relating to amounts received pursuant to demonetization (was reported). These returns were taken for assessment and a notice under Section 143 (2) dated 21.09.2018 of the Income Tax Act and notice under Section 142(1) dated 21.08.2019 was issued and called on the petitioner to furnish documents. Thereafter, another notice dated 11.11.2019 was issued to the petitioner to furnish the details. The notice also fixed a hearing on 18.11.2019 at

11.00AM. Since, the petitioner failed to furnish the details called for, the petitioner was issued with another notice dated 29.11.2019 which was sent through internet on 29.11.2019 proposing to complete the assessment under Section 144 of the Income Tax Act.

3. The petitioner in partial compliance of notice issued under Section 142(1) filed a reply on 13.12.2019 which was received by the respondent officers. Pursuant to which a show notice under Section 143(3) of the Income Tax Act was issued to the petitioner on 18.12.2019. As per the notice, a hearing was fixed on 20.12.2019 at 11.00AM. However, the petitioner did not submit his reply within two days from 18.12.2019. However, on the following day i.e, on 21.12.2019 yet another notice was issued which was in the nature of reminder wherein a final opportunity was given to the petitioner to file reply on or before 23.12.2019 before 5.00pm.

4. Meanwhile, on 24.12.2019, the petitioner collated the information that was called for in terms of the notice dated 18.12.2019 running to several pages in the format prescribed in the said notice and sent it. However, on 24.12.2019, the impugned order was passed by the respondent ignoring the documents filed by the petitioner. It appears that the petitioner had uploaded the required details in the web portal on 24.12.2019 at 10.45am, as per the acknowledgment generated from the website of the Income Tax Department.

5. The impugned order dated 24.12.2019 was passed and transmitted on the same day on 11.25am. It is evident that the order has been passed by the respondent, even though, the petitioner had transmitted the information at 10.45am on 24.12.2019 though belatedly. The learned counsel for the petitioner submits that a fresh order can be passed by the respondent.

6. On the other hand, the learned counsel for the respondent would submit that the petitioner was negligent and had failed to keep up with various deadlines fixed under Section 142(1) of the notice dated 21.08.2019 and after repeated reminders show cause notice was sent for completing the assessment by invoking the best judgment under Section 144 of the Act. The petitioner furnished only partial information on 13.12.2019 and therefore a fresh notice was issued on 18.12.2019 asking the petitioner to comply with the requirement under the Format given therein.

7. The learned counsel for the respondent would submit that no leniency should be shown to the petitioner, as the petitioner being the Cooperative Bank ought to have furnished the particulars called for. Since, the petitioner failed to do so,

no interference is required and the petitioner had an alternative remedy before the Commissioner of Appeals.

8. I have considered the arguments of the learned counsel for the petitioner and the learned counsel for the respondent.

9. In this case, notice for scrutiny assessment was issued on 21.09.2018 under Section 143(2) of the Income Tax Act, followed a notice dated 21.08.2019 under Section 142(1) of the Act. Further reminder was sent to the petitioner on 11.11.2019. However, the petitioner failed to appear or furnish the required details. Under these circumstance, another notice dated 29.11.2019 was issued to the petitioner to show cause as to why the assessment should not be completed with under Section 144 of the Income Tax Act.

10. Thereafter, the petitioner attempted to furnish the details which were found to be insufficient, therefore, another show cause notice dated 18.12.2019 was issued to the petitioner wherein deadline was fixed. The petitioner was called upon to furnish the particulars in the prescribed Format. Since, the petitioner failed to furnish the particulars required, hearing was fixed by notice dated 21.12.2019 asking the petitioner to file reply with the required documents on or before 23.12.2019 before 5.00pm.

11. However, the petitioner failed to furnish the same within the time stipulated in the said notice and instead filed required details on 24.12.2019 before the impugned order was signed and despatched through e-mail by the respondent.

12. Though there is failure on the part of the petitioner to keep up with the deadlines fixed by the respondent, nevertheless the petitioner had furnished the details required by uploading the same in the official website of the respondent on 24.12.2019 at 10.45am. Therefore, even if the impugned order is quashed no prejudice or harm would be caused to the respondent. Further, the impugned order had not been signed by the respondent, when the information was uploaded by the petitioner.

13. Therefore, I am of the considered view, the impugned order passed in a hurried manner is unsustainable is liable to be quashed.

14. In the light of the above discussion, the impugned order dated 24.12.2019 passed by the respondent is hereby set aside and the case is remitted back to the respondent to pass a fresh speaking order within thirty days from the date of a receipt of copy of this order. The respondent shall fix a personal hearing for the said proceedings before passing orders. While passing

fresh orders, the respondent shall take into consideration the reply and the documents filed by the petitioner on 24.12.2019. It is also made clear no extension of time will be entertained by the respondent.

15. The writ petition is allowed by way of remand. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

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To

The Assistant Commissioner of Income Tax
Circle - 2, Erode Income Tax Office,
No.15, Gandhiji Road, Erode - 638 001.

+1cc to Mr.A.P.Srinivas, Advocate, SR.No.2322.
+1cc to Mr.G.Baskar, Advocate, SR.No.2434.

W.P.No.300 of 2020

BS(CO)
CSR: 19.02.2020