IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2020

CORAM:

THE HON'BLE MR.JUSTICE N.KIRUBAKARAN
and
THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A.No.189 of 2020
and C.M.P.No.2934 of 2020

Narasimman Padmavathy ..Appellant/Writ Petitioner

-Vs-

The Income Tax Officer
Ward-2
Tiruvannamalai ..Respondent/Respondent.

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, against the order dated 27.11.2019 passed in W.P.No.33157 of 2019.

W.P.No.33157 of 2019 Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue writ of certiorari, calling for the records pertaining to the order in assessment order No.ITBA/AST/S/144/2019-20/1018695593(1) dated 09.10.2019 passed by the respondent and quash the same.

For Appellant : Mr.P.C.Harikumar
For Respondent : Mr.A.P.Srinivas

JUDGMENT

P.VELMURUGAN,J.

This Writ Appeal is filed against the order dated 27.11.2019 passed by the learned Single Judge in W.P.No.33157 of 2019. The Appellant is the Writ Petitioner who filed W.P.33157 of 2019, seeking to issue a Writ of Certiorari calling for the records pertaining to the order in assessment order No.ITBA/AST/S/144/2019-20/1018695593(1) dated 09.10.2019 passed by the respondent and quash the same.

2. The learned Single Judge, after hearing the submissions made on both sides, finding that a statutory appellate remedy is available to the petitioner by filing regular appeal before the concerned Appellate Authority, disposed of the writ petition, with liberty to the petitioner to file appeal before the concerned Appellate Authority, within a period of three weeks from the date of the receipt of a copy of the said order and further directed the Appellate Authority to consider the same and pass orders on merits and in accordance with law, without reference to the period of limitation. Aggrieved by the said order of the learned Single Judge, the writ petitioner/appellant filed the present intra court appeal.

3.1. The brief facts of the case is that respondent/Income Tax Officer, Ward 2, Tiruvannamalai, passed the Assessment Order on 09.10.2019 for the assessment year 2017-18, based on the information on the system that the assessee had made cash deposits of Rs.11,10,000/- in Bank of India, Vandavasi Branch, during the specified period 08.11.2016 to 30.12.2016 in the demonetized currency.

3.2. Notice under Section 142(1) of the Income tax Act, 1961, was issued to the appellant/assessee on 12.03.2018 calling for the return of income for the assessment year 2017-18. The appellant/assessee did not respond to the notice issued and did not file the return of income. Further, show cause notice was issued to the assessee on 20.05.2019, calling for the details of the above cash deposits made, the books of account, financial statements etc., to explain the source of cash deposits.

3.3. The appellant/assessee appeared and submitted copy of ITR filed for the assessment year 2017-18, copy of Bank Account statement, copy of statement of computation of income and Agricultural lands patta and Chitta. The assessee has stated that she had an opening cash balance in hand of Rs.2,60,000/- and she had received jewel loan on 17.06.2016 of Rs.3,00,000/-, another jewel loan on 29.06.2016 of Rs.2,00,000/- and an agricultural loan of Rs.3,00,000/-, thus totaling Rs.11,10,000/- were unconsumed and kept in hand and the same is deposited in bank after the announcement of demonetization.

3.4. On analysis of the transaction in the savings bank account of the Appellant, it transpired that the total credits made by the assessee during the FY 2016-17 amounts to Rs.16,10,090/-; out of which, the assessee made cash deposits into the bank account during the previous year relevant to the assessment year in question amounting to Rs.11,20,500/- of which Rs.11,10,000/- was deposited during the specified period i.e., 08.11.2016 to 31.12.2016. It is further noticed that an amount of Rs.15,000/- was deposited prior to the demonetization period and no deposit was made after demonetization.

3.5. The assessing order further reads that the assessee filed the return of income on 12.08.2019 admitting Rs.64,500/- as business income and Rs.3,50,000/- as agricultural income. It is considered that the return is filed beyond the date allowed and therefore, considered the same as non-est in law. The Assessing Officer, treating that the assessee failed to respond to the notices issued u/s.142(1) of the IT Act, calling for the return of income, the proceedings initiated u/s.142(1) of the IT Act, 1961, was concluded exparte u/s.144 of the IT Act.

3.6. As per the directions issued by Joint Commissioner of Income Tax, Vellore Range, the assessment proceedings were concluded holding that as on 17.06.2016, the account balance of the assessee was Rs.1,116/-; if the assessee was really having an opening cash balance of Rs.2,60,000/-, there is no need to take a jewel loan on 17.06.2016 of Rs.3,00,000/-. The explanation given by the assessee that the cash deposited during the demonetization period made out of cash in hand which was more than four months, for Rs.11,10,000/- is considered as devoid of any facts and against human probability.

3.7. Since the Assessing Officer came to the conclusion that the cash deposits in the bank brought to tax u/s.69A of the IT Act as the unexplained money of the assessee, it was brought to tax u/s.69A of the Act and penalty proceedings u/s.271AAC of the Act was initiated. Further Penalty proceedings u/s. 272A(1)(d) of the Act was issued for failure to comply with the notice dated 30.11.2017 issued under section 142(1) of the IT Act; for failure to comply with the provisions of Section 139(1) of the Act, penalty proceedings u/s.271F of the Act was also initiated. The income chargeable to tax was assessed as Rs.11,20,500/-.

4. Aggrieved by the said order dated 09.10.2019 passed by ITO, Ward-2, Tiruvannamalai, the appellant/assessee has filed W.P.No.33157 of 2019 before this court, raising the ground that the order passed by the respondent is in violation of principles of natural justice and without giving notice and personal hearing and without jurisdiction.

5.1. The learned counsel for the appellant/assessee would submit that the learned Single Judge has failed to see that even if any order has been passed without jurisdiction or against the principles of natural justice, the aggrieved party even though has got an alternative remedy by way of appeal, there is no bar to entertain the writ petition. It is further stated that in response to the notice issued under Section 142(1) of the IT Act, appellant opted to file a return and in such circumstances, assessment done u/s.144 of the Act as exparte best judgment assessment, is totally incorrect.

5.2. It is stated that in response to the notice dated 20.5.2019, the appellant submitted all the relevant materials and thereafter, no notice has been issued to produce other documents to substantiate the return of income filed by the appellant.

5.3. It is also contended that as soon as return of income is filed by the appellant for the assessment year 2017-2018, if the assessment officer found it to be incorrect or required scrutiny, it can be done by the Assessing Officer, only after issuing notice under Section 143(2) of the Income Tax Act and no notice has been issued by the Assessing Officer under Section 143(2) of the Income tax Act, but proceeded with the exparte best judgment under Section 144 of the Income Tax Act.

5.4. In support of his submissions, the learned counsel for the appellant cited the following decisions :

(1) (2010) 3 Supreme Court Cases 259 - Assistant Commissioner of Income Tax and another Vs. Hotel Blue Moon

(2) [2019] 412 ITR 285 (Mad) - Principal Commissioner of Income-tax Vs. J.Jay Tvt. Pvt. Ltd.,

By placing reliance on the above said two decisions, the learned counsel for the appellant/assessee, contended that on the ground that non issuance of notice under Section 143(2), the matter can be remitted to the Appellate Authority.

6. Heard the submissions made by the learned counsel for the appellant and perused the records carefully.

7. In the judgment of the Honourable Supreme Court referred to by the appellant counsel reported in (2010) 3 SCC 259 [cited supra], the facts of the said case is with regard to assessment of Block assessment and determination of undisclosed income for a block period. Again in the case reported in [2019] 412 ITR 284 (Mad) [cited supra], it is seen that the Assessing Officer asked the assessee therein to file the balance-sheet, profit and loss account for the period that ended on March 31, 1995 and produce the books of account, vouchers etc in respect of the relevant previous year. The assessee filed the return on March 30, 1998. Before the Tribunal, the assessee raised the additional ground for the first time relating to non-issuance of notice under Section 143(2). The Tribunal admitted the additional ground and remanded the matter. But in the case on hand, notice under Section 142(1) was issued on 12.03.2018 calling for return of income for the Assessment Year 2017-18. Thereafter, show cause notice was issued to the assessee on 20.05.2019 calling for the details of the cash deposit, books of account, financial statements to explain the source. The assessee submitted letter dated 13.08.2019 and furnished certain

details. After appraisal of the facts to the Joint Commissioner of Income Tax, Vellore Range, Vellore, directions were sought as per the provisions of Section 144A of the Income Tax Act, to complete the assessment proceedings and thereafter only, Assessment Order was passed, assessing the income of the appellant as Rs.11,20,500/-.

8. In the case on hand, the Income Tax Officer/Respondent, taking into account the fact that the explanation given by the assessee that the cash deposited during the demonetization period made out of cash in hand (which was more than four months) of Rs.11,10,000/- was against human probability and that there is no explanation for the source and nature of cash deposits in the Savings Bank Account, brought the above unexplained income to tax under Section 69A of the Income Tax Act, 1961.

9. The learned Single Judge, after considering the facts and circumstances of the case, without expressing any view on the merits of the matter, disposed of the writ petition, by granting liberty to the appellant/writ petitioner to file appeal before the concerned appellate authority. It shows that the assessee/appellant herein, without availing the appellate remedy, filed the Writ Petition before the writ court. Therefore, the learned Single Judge, directed the writ petitioner/appellant herein to file statutory appeal before the appellate authority, challenging the order passed by the Assessing Officer. Considering the fact that the Act provides effective and sufficient forum for any aggrieved party to work out their remedy, we do not find any ground or any merit in the appeal. Further, the decisions of the Honourable Supreme Court, relied on by the appellant, would not in any manner advance the case of the appellant/assessee. Therefore, The Writ Appeal is liable to be dismissed.

10. In the result, for all the above reasons, agreeing with the view of learned Single Judge, we reject the Writ Appeal. No costs. Consequently, connected CMP is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Income Tax Officer
Ward-2
Tiruvannamalai.

+1cc to Mr.A.P.Srinivas, Advocate, Sr.No.30043
+1cc to Mr.P.C.Hari Kumar & Associates, Sr.No.30127

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