IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2020

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

Writ Petition No.6480 of 2020

and WMP. No.7666 of 2020

Baluudayar Ramanathan,

Prop. Sri Vinayaka Traders,

350, Gandhi Road Old Pet,

Krishnagiri - 635 001. ...Petitioner

Vs.

1. Principal Commissioner of Income Tax,

Salem.

2. Income Tax officer,

Ward -1, Krishnagiri. ... Respondents

PRAYER: PETITION filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari, calling for the records of the second respondent in PAN:AGEPR1102L dated 19.12.2019 passed under Sec.144 of the Income Tax Act for the assessment year 2017-18 and quash the same.

For Petitioner: Mr.T.Vasudevan

For Respondent : Mr.A.P.Srinivas,
Senior Standing Counsel.

O R D E R

Mr.A.P.Srinivas, learned Senior Standing Counsel accepts notice for the respondents and is armed with instructions to proceed finally with the matter. Thus, by consent, the Writ Petition is taken up for final disposal even at the stage of admission.

2. The challenge is to an order of assessment dated 19.12.2019 passed in terms of the provisions of Section 144 of the Income Tax Act, 1961 (in short 'Act'). The case of the petitioner is that he is a drop out from school and was engaged in manual labour. By dint of hard work and experience, the petitioner has started a rice mundy business.

3. In respect of Assessment Year 2017-18, a return of income was filed on 04.11.2017 admitting income of Rs.6,16,050/-. Both manual as well as electronic notices under Section 143(2) dated 21.09.2018 were served upon the assessee. Thereafter, a questionnaire appears to have been issued and according to the petitioner, the questionnaire was only uploaded electronically but not served manually. Thus it was missed by the petitioner who failed to respond to the same.

4. In the meanwhile, a notice under Section 133(6) was issued to the petitioners’ Bank calling for information in regard to the deposits made by the petitioner and it was ascertained by the Assessing Officer that a sum of Rs.49,02,000/- had been deposited in demonetized currency on 10.11.2016. A questionnaire as well as a show cause notice dated 30.11.2019 thus came to be issued under Section 144 of the Act calling upon the petitioner to furnish a reply in respect of the aforesaid deposits. The last show cause-notice issued on 30.11.2019 proposed completion of the assessment to the best of the Assessing Officers' judgment brining to tax the deposits amount as unexplained income in the hands of the petitioner. Since there was no explanation/response forthcoming from petitioner, the entire amount was brought to tax. The Officer also notes that as regards the total turnover of a sum of Rs.6,33,42,771/- for A.Y.2017-18, the net profit was only 1.08% as against 2.14% for the previous assessment year.

5. The main ground argued before me is lack of opportunity in completing the assessment. However, the petitioner has already availed of statutory appellate remedy and filed an appeal before the Commissioner of Income Tax (Appeals). A stay petition has also been filed before the Commissioner of Income Tax (Appeals) that has been conditionally allowed on 17.02.2020 granting a scheme of instalments. The Officer, while noting that 5% of the demand has been paid, directed the petitioner to remit 15% of the remaining demand in 10 equal monthly instalments commencing from 15th of March, 2020. Subject to compliance with the aforesaid condition, the balance of 80% has been stayed till disposal of first appeal or six months whichever is earlier. The petitioner has accepted order dated 17.02.2020.

6. In the light of the above discussion, and since a statutory appeal has rightly been filed by the petitioner, this Court is unable to come to the aid of the petitioner as prayed for and this Writ Petition is dismissed. No costs. Connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

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To

1. Principal Commissioner of Income Tax,

Salem.

2. Income Tax officer,

Ward -1, Krishnagiri.

+1cc to Mr.R.Janakiraman Advocate SR.No.23807

+1cc to Mr.AP.Srinivas, Advocate SR.No.22859

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SVI(CO)

GMY(14/07/2020)