IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2020

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.No.33357 of 2019
and
WMP.Nos. 33819/2019 & 8246/2020

Deepa Reji Abraham
.. Petitioner

Vs

1.The Deputy Commissioner of Income Tax,
Corporate Circle - 1(1) Income Tax Department,
121, Nungambakkam High Road, Chennai - 600034.

2.The Principal Commissioner of Income Tax,
Chennai - 1 Income Tax Department
121, Nungambakkam High Road,
Chennai - 600034. …Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Certiorari, to call for the records of the 1st Respondent to quash the Impugned notice dated 30.03.2019 in PAN. AEBPD2355N relating to the Assessment Year 2012-2013 and for dropping the proceedings of re-assessment continued by the 1st Respondent for the assessment year 2012-13.

For Petitioner : Mr.A.S.Sriraman
For Respondents : Mr.Prabhu Mukund Arun Kumar
Junior Standing Counsel

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O R D E R

The petitioner challenges notice dated 30.03.2019 issued in terms of Section 148 of the Income Tax Act, 1961 (Act) relating to assessment year 2012-13 and issued by the Deputy Commissioner of Income Tax/R1. The argument advanced is that while the notice has been issued by R1, as per the website of the Income Tax Department, the jurisdictional Assessing Officer of the petitioner is the 'Assistant Commissioner of Income Tax, Circle-1, Kancheepuram'.

2. The respondent has filed a counter wherein he states as follows:

…It is submitted that Mrs.Deepa Reji Abraham, the petitioner herein was originally assessed at Non corporate Range 3, Chennai as per the pin code wise jurisdiction assigned for the Income tax department. However, for income tax purpose, the Managing Director/Director/Manager/Secretary of companies should be assessed within the circle where the companies in which they are directors are assessed. Since Smt. Deepa Reji Abraham is the director of M/s. Aban Investments Limited and M/s.Aban Infrastructure Private Limited, she need to be assessed where the company in which the assessee, i.e. the petitioner herein is key managerial person (holding 29.20% of share in M/s.Aban Investments limited and 99.35% of shares in M/s.Aban Infrastructure Private Limited) is being assessed. The said companies are assessed incorporate Circle-1(1) Chennai. Accordingly, the assessment of Mrs.Deepa Raji Abraham should have been done at Corporate Circle 1(1), Chennai where the company is assessed as per alphabetical and area-wise jurisdiction as per the order of the Principal Chief Commissioner of Income Tax, Tamilnadu and Puducherry. This fact the petitioner also knows very well but failed to brought to the knowledge of the Assessing officer, Corporate Circle Range 3, Chennai. To set right the mistake PAN transfer request was initiated in the Income Tax Business Application (ITBA) platform by the 1st respondent herein, whereas due to technical snag the PAN of the applicant landed at Circle 1, Kanchipuram.

3. As per the common counter, there was a technical snag on account of which the website of the Income Tax Department erroneously reflected that the Assessing Officer of the petitioner was the Assessing Officer, Circle-1, Kancheepuram whereas the correct officer is R1. Thus, admittedly, the Assessing Officer of the petitioner as per the official website of the Income Tax Department is the Assessing Officer holding jurisdiction over Circle I, Kancheepuram.

4. Upon receipt of the notice, the petitioner made an attempt to comply with the statutory requirement of filing a return in response to the notices, but was unable to upload the same, as the attempt was rejected by the website on the ground that 'no valid notice found for the selected assessment year and the section selected'. The website also stated that as far as re-assessment was concerned, there was 'no pending action found'. The petitioner has filed a screenshot of the page evidencing the aforesaid narration. This has been conveyed to R1 by letter dated 30.04.2019 wherein the petitioner specifically requested a clarification in regard to the jurisdiction of the Assessing Officer and also to accept a manual

return in response to the S.148 notice as the e-filing portal did not accept the return filed by the petitioner.

5. Though the above facts were brought to the notice of the respondents, no action appears to have been taken to regularize the proceedings. Instead, a notice under Section 143(2) was issued calling upon the petitioner to appear before the Officer for finalisation of assessment. Thus, vide letter dated 24.09.2019, the petitioner once again reiterated the position that the notice under Section 148 for AY 2012-13 was illegal and invalid.

6. The petitioner also pointed out that initially for AY 2013-14, a notice in terms of Section 148 had been issued by the same officer who issued the present impugned notice. As in the case of AY 2012-13, the petitioner objected to the same, also pointing out that she was unable to file/up-load an e-return on account of the min-match in the designation of the assessing officer. Though there was no response from the officer, another notice under Section 148 dated 14.06.2019 had been issued by R1 to which the petitioner had been able to respond. As per the counter, the subsequent notice was issued by R1 after ensuring that the departmental Website reflected the correct name and designation of the assessing officer of the petitioner. The respondent is thus well aware of both the officer holding proper jurisdiction as well as the proper procedure to be followed in matters of re-assessment.

7. In light of the above facts, on 18.08.2020, the Court passed the following order:

> The counter filed by the respondent is unsatisfactory insofar as it does not explain what the technical snag was leading to issuance of notice on 30.03.2019 manually.
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> 2. Learned Senior Standing Counsel would state that the technical snag was ultimately resolved only in June 2019, which is why the Assessing Officer, for the subsequent assessment year, was able to issue notice under Section 148 through the e-portal. This has taken two months.
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> 3. The Court is curious as to what the technical snag is that would take two months to resolve.
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> 4. List on 09.09.2020. Interim stay granted on 19.12.2019 and extended on 22.01.2020, 19.02.2020 and 12.03.2020 will stand extended till the next date of hearing. Written explanation to be furnished by then.

8. Adjournments were sought on 09.09.2020, 28.09.2020 and 04.11.2020 to explain the technical snag. Despite significant number of opportunities having been granted for filing a written explanation in regard to the alleged technical snag occasioned in issuance of notice dated 30.03.2019 by an Assessing Officer, who has no jurisdiction in the matter, the alleged snag is not explained till date.

9. Even today Mr.Prabhu Mukund Arun Kumar, learned Junior Standing Counsel for the Income Tax Department only relies on the counter wherein it is admitted that notice dated 30.03.2019 has been issued by the wrong authority.

10. Impugned notice dated 30.03.2019 issued by the Assessing Officer/R1, admittedly not the jurisdictional Assessing Officer of the petitioner as per the official website of the Income Tax Department is thus, bad in law. It hardly need to stated that a statutory notice, to be valid, has to be issued by an officer having the requisite jurisdiction to do so. The official website of the Income tax Department contains all material particulars in regard to an assessee, including specifically, the officer holding jurisdiction over the assessee. Clearly, the mention of the assessing officer is not an empty formality since the petitioner was unable to upload the return of income in response to the notice for re-assessment as the website did not accept the same on account of the mismatch in the details of the two officers, one reflected in the website as the proper officer and the other who issued the notice.

11. In the light of the discussions as above, this writ petition is allowed. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy// Sub Assistant Registrar

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To

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sra A.SK(05.02.2021).