IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2021

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THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.NO.625 OF 2020
AND
WMP.NO.731 OF 2020

Veeran Ambiga ... Petitioner

Vs

1. The Principal Commissioner of Income Tax,
   Ministry of Finance,
   Income Tax Department,
   No.121, Mahatma Gandhi Road,
   Nungambakkam, Chennai 600 034.

2. The Assessment Officer,
   Ward 2, Tiruvannamalai,
   Income Tax Department,
   Tiruvannamalai. ... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Certiorari to call for the entire records pertaining to the exparte best judgment assessment for the assessment year 2017-18 under Section 144 of the Income Tax Act dated 26.11.2019 vide order No.ITBA/AST/S/144/2019-20/1021133838 (1) on the file of the second respondent and quash the same as arbitrary, against the principles of natural justice.

For Petitioner : Mr.P.C.Harikumar

For Respondents : Mr.ANR.Jayapratap,
Government Advocate

O R D E R

Heard Mr.P.C.Harikumar, learned counsel for the petitioner and Mr.ANR.Jayaprathap, learned Government Advocate for the respondents.

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2. The challenge is to an order of assessment dated 26.11.2019 passed in terms of the provisions of the Income Tax Act, 1961 (in short 'Act') for the Assessment Year (A.Y.) 2017-18.

3. The main ground argued is violation of principles of natural justice insofar as the learned counsel for the petitioner would state that barring notice dated 14.02.2018, further notices referred to in the impugned order of assessment have not been received by the petitioner.

4. Per contra, learned counsel for the revenue would submit that this is a case where the petitioner has neither filed a return of income nor responded to any of the communications/notices issued. Hence the Assessing Officer has proceeded correctly in completing the assessment to the best of his judgment.

5. Admittedly, the petitioner has not filed a return of income for the year in question. The impugned assessment is based on information received from the petitioner's bank, i.e., Karur Vysya Bank, Arani Branch to the effect that deposits were made in Specified Bank Notes on two days amounting to a sum of Rs.19,07,500/- and there were other bank transactions as well made during demonetization period.

6. On an analysis of the bank account of the petitioner, the Assessing Authority issued a notice to the assessee calling upon her to explain the same, but there was no response to any of the notices issued. An explanation is set forth in affidavit dated 02.01.2020 filed initially in support of the Writ Petition, where the details of her income for AY.2016-17 and remittances in banks are set out. The petitioner states that notice dated 20.05.2019 and penalty notice were received by her, but, on account of health issues, she could not give suitable instructions to the Chartered Accountant.

7. A second affidavit has been filed on 18.01.2020, when the petitioner states that none of the notices referred to in the impugned assessment order have been received except notice dated 14.02.2018 that was uploaded in the portal and noted by the Chartered Accountant.

8. Thus, even assuming that notices dated 14.02.2018 and 20.05.2019 were not served upon the petitioner, notice dated 14.02.2018 was admittedly uploaded in the portal and has come to the attention of the petitioner.

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9. The second affidavit is styled as a 'Better Affidavit'. In my understanding, a better affidavit is one that elaborates and clarifies upon facts where the original affidavit is unclear or inadequate. It does not contemplate a situation where the fact pattern has been altered substantially. Be that as it may, two things are clear: one, that the petitioner has not fied a statutory return of income and secondly that notice dated 14.02.2018 has certainly come to her attention, but has not been complied with. In the absence of co-operation with the Department in the conduct of assessments, this is not an appropriate case for interference under Article 226 of the Constitution of India.

10. This Writ Petition is dismissed. No costs. Connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Commissioner of Income Tax,
Ministry of Finance,
Income Tax Department,
No.121, Mahatma Gandhi Road,
Nungambakkam, Chennai 600 034.

2. The Assessment Officer,
Ward 2, Tiruvannamalai,
Income Tax Department,
Tiruvannamalai.

+1cc to Mr.P.C.Harikumar, Advocate, S.R.No.7159

W.P.No.625 of 2020
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NRL(CO)
CS/12/03/2021

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