IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.4871 of 2020
and
WMP. No.5752of 2020

Sigamani Sivakumar,
4/360, Prop.S.S.Traders,
Kandappa colony,
Annadhanapatty,
Salem-636002 …Petitioner

Vs

Joint Commissioner of Income Tax (OSD)
Circle-1(1), Salem. …Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Certiorari calling for the records of the rspondent in PAN:AGUPS1244E for the assessment year 2017-18 dated 20.01.2020 modifying the order dated 21.12.2019 and quash the same.

For Petitioner : Mr.T.Vasudevan
For Respondent : Mr.A.P.Srinivas
Senior Standing Counsel

O R D E R

Heard Mr.T.Vasudevan, learned counsel for the petitioner and Mr.A.P.Srinivas, learned Senior Standing Counsel for the respondent.

2. This case involves a peculiar factual matrix. The petitioner, an assessee on the file of the respondent/Assessing Officer, filed a return of income in response to which notices for scrutiny were issued. The assessee participated in the assessment. A show cause notice appears to have been issued on 15.12.2019 in response to which the petitioner filed a response, belatedly, after passing of the assessment order. Thus, an order came to be passed under Section 143(3) on 21.12.2019 without reference to the response filed. However, in passing the assessment order, the entire content was adopted from the case of some other assessee and the respondent explains this away, stating that it was a clerical mistake. Noticing the error, the impugned order dated

20.01.2020 has come to be passed in terms of Section 154 of the Act seeking to rectify the mistake in the order of assessment.

3. I am not in this writ petition concerned with the validity or otherwise of the order of assessment dated 21.12.2019, since the petitioner has not challengd the same. What concernes me is the validity of the rectification order and the ground argued is that there is no opportunity granted to the petitioner prior to passing of the said order. Mr.Srinivas defends the order stating that there was a mistake apparent on record in the assessment order dated 21.12.2019 that was liable to be corrected and as such there was no necessity for notice to be issued to the petitioner prior thereto.

4. This does not appear to be borne out by the provisions of Section 154(3), that states that an amendment, which has the effect of enhancing the demand under an assessment order or reducing a refund or otherwise increasing the liability by the assessee, shall not be made, unless the authority concerned has given notice to the assessee and has allowed the assessee a reasonable opportunity of being heard.

5. Mr.Srinivas rightly points out the order of rectification is in the nature of an original order of assessment, since the original order dated 21.12.2019 had not dealt with the income returned by the petitioner or issues arising from her income tax return. In the computation at para-7 of the impugned order, the returned income of the petitioner, unexplained income and the disallowance of interest expenses, as discussed in the rectification order, have been added and the total income arrived at is more than double of the returned income. Proceedings for the levy of penalty under section 271AAC and 270 A have also been initiated. Clearly, an assessment has been framed in the guise of a rectification order, that too without an opporutinity of hearing.

6. In the light of the discussion as aforesaid, the impugned order has no legs to stand, whether construed as an order under Section 143(3) or under Section 154 and is quashed. This writ petition is allowed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CS VII)

//True copy//

Sub Assistant Registrar

ska/vs

To

Joint Commissioner of Income Tax (OSD)
Circle-1(1), Salem.

+1cc to Mr.A.P.Srinivas, Advocate SR.No.7536

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KK(CO)
KKV/04/03/2021