IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. Nos. 5264 of 2011 & 3011 of 2012
and
M.P. Nos.2 of 2011 & 2 of 2012
(Through Video Conferencing)

A.Vadivelu,
Sub-Registrar,
Office Bhavani,
No.353, Taluk Office Compound,
Mettur Main Road,
Bhavani - 638 301. ...Petitioner in W.P.No.5264 of 2011

Visuvasam Amal Manickkaraj,
Sub-Registrar,
Office Sub-Registrar,
Postal Colony,
Thottipalayam,
Tirupur. ...Petitioner in W.P.No.3011 of 2012

Vs

1.The Director of Income-Tax,
(CIB), (I/C),
Nungambakkam High Road,
Chennai - 600 034.

2.The Income Tax Appellate Tribunal,
Chennai Bench 'D',
Rajaji Bhavan,
Besant Nagar, Chennai - 600 090. ...Respondent in both W.Ps

Prayer in W.P.No.5264 of 2011: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records on the files of the 1st respondent in C.No.DIT(CIB)/CHE/2010-11 dated 23.09.2010 and quash the same as being without jurisdiction and authority of law.

Prayer in W.P.No.3011 of 2012: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records on the files of the 1st respondent in C.No.DIT(CIB)/CHE/2010-11 dated 23.09.2010 and quash the same as being without jurisdiction and authority of law.

WEB COPY

For Petitioner : Mr.Niranjan Rajagopal
(in both W.Ps)
For Respondents: Mr.A.P.Srinivas
(in both W.Ps) Senior Standing Counsel

COMMON ORDER

By this common order both the writ petitions are being disposed of.

2. The Petitioners, sub registrars of Tamil Nadu State Registration Department have challenged the impugned orders seeking to impose penalty on them under section 271 FA of the Income Tax Act, 1961 on account of their failure to file annual information report under subsection 285 BA of the Income Tax Act, 1961.

3. The petitioners have challenged the impugned order passed by the 1st respondent seeking to impose penalty under section 271 FA of the Income Tax Act, 1961 on the ground that before passing the impugned order, mandatory notice contemplated under section 285 BA (5) was not issued to them and that the penalty was imposed by the respondents directly by passing the mandatory requirement of the aforesaid provision.

4. The operative portion of the impugned order reads as under:-

> "It was pointed out during the course of hearing that the submission of CD to ITO was in response to his requisition under Section 133(6) and the same is not a compliance in accordance with Section 285 BA. For filing the Annual Information under Section 285 BA for the Financial Year 2008-09 the return should hve been filed in accordance with manner laid down under the said Section read with Rule 114E. To be precise the said Annual Return is to be filed before the NSDL through TIN Facilitation Centre. Therefore, the said Organization has not complied with the provisions of section 285 BA by filing the Annual Return for the Financial Year 2007-8 also.
>
> The case was again posted for hearing on 22.09.2010 at 11.00 am. There was no response even to this letter also either in person or through any letter seeking adjournment. It seems the said organization has no valuable reason to offer in its support.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

On 23.09.2010 one acknowledgment was received by fax showing filing of return on 23.09.2010. The reason for delay in submitting the return was not explained at all. Therefore the delay is upto 23/09/2010 and no reason whatsoever could be adduced for the same.

It is seen from the records of this office, the said organization has not filed the return as required under Sub-Section (1) of Section 285 BA of the Income-Tax Act, 1961 for the Financial Year 2007-2008. Therefore it appears that the said organization is a habitual defaulter by not filing the return as required under Sub-Section (1) of Section 285 BA of the Income-Tax Act.

It appears that the period of delay is for 12 months and 22 days and the assessee is a defaulter as it has filed the Annual Information Return the financial year 2008-09 on 23/09/10 which is not in time as required under sub-section (1) of Section 285 BA of the Income-Tax Act.

From the above it can be readily seen that the assessee has failed to adduce any reasonable cause for not filing the Annual Information Return in time for the financial year 2008-09 for which penalty under Section 271 FA is leviable. The onus of proof is on the part of defaulter to establish that there was a reasonable cause for the failure in view of the provisions of Section 273B of the I.T. Act. The above defaulter has failed to discharge the onus of proof and no explanation, whatsoever could be submitted clarifying the reasons for the delay in submitting the return, in spite of the two opportunities given.

With the insertion of Section 273B the onus of establishing the reasonability or otherwise of the cause of the default has been shifted from the revenue to the tax payer. After insertion of this Section it is for the defaulter to prove that "there was a reasonable cause for the failure" in order to avoid the imposition of penalty. The defaulter shall have to lead evidence of providing that there was a reasonable cause for the failure. In this case, the defaulter has been given two opportunities of being heard and the notices have been sent by speed post vide No.003109894 dated 09.09.2010.

https://hcservices.ecourts.gov.in/hcservices/

> The law squarely casts the duty on the defaulter of providing that he was prevented by reasonable cause from complying with requirements of the law.
>
> Looking to the facts and circumstances of the case, I consider this to be a fit case for levy of penalty under Section 271FA of the IT Act. As per provisions of section under Section 271FA, penalty leviable is Rs.100 per day of default. The number of days of delay in filing the Annual Information Return for the financial year 2008-09 in this case works out to 387 days till 22.09.2010 and the penalty leviable is Rs.38700/- (Rs.387x100) upto 22.09.2010. Therefore I levy penalty under Section 271FA of Rs.38,700/- (Rupees thirty eight thousand seven hundred only). This should be paid as per demand notice enclosed."

5. Defending the impugned order, the learned counsel for the Income Tax Department submits that under section 285 BA of the Income Tax Act, 1961, the petitioners were required to file annual information return in respect of specified financial transactions which are registered or recorded by them during any financial year and information relating to such transaction were to be filed before the prescribed income tax authorities or such other authority or agency as may be prescribed. He further submits that returns were to be filed within the prescribed time after the end of such financial year, in such form and manner (including on a floppy, diskette, magnetic cartridge tape, CD-ROM or any computer readable media) as may be prescribed.

6. It is further submitted that a show cause notice dated 8.9.2010 was issued to show cause why an order penalty should not be imposed on the petitioners under section 271 FA of the Income Tax Act, 1961 and that the petitioners had not filed the annual information return on the date of the said notice.

7. I have considered the arguments advanced by the learned counsel for the petitioner and respondents.

8. The impugned order precedes a show cause notice dated 8.9.2010 which in turn states that earlier another notice dated 30.3.2010 was issued to the petitioners and since the petitioners failed to furnish annual information report in time, the show cause notice was being issued to the petitioners to show cause as to why penalty under section 271 FA of the Income Tax Act, 1961 should not be imposed on the petitioners.

9. Copy of notices dated 30.3.2010 have not been filed either by the petitioners or by the respondents. The counter filed by the respondents is also silent on this aspect. It appears that mandatory requirements of Section 285 BA calling

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

upon the petitioners to file the returns within a period of 60 days from the date of notice has not been complied with. Instead, the petitioners have been directly asked to show cause only why penalty should not be imposed. In this case the petitioner has in any event filed the returns on 20.10.2011 though belatedly. The purpose of the requirements of section 285 BA of the Income Tax Act, 1961 stands satisfied. Under the circumstances, I do not find any merits of the impugned order. These orders are there for liable to be quashed and are accordingly quashed.

10. These writ petitions thus stand allowed. No cost. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

arb
To

1.The Director of Income-Tax,
(CIB), (I/C),
Nungambakkam High Road,
Chennai - 600 034.

2.The Income Tax Appellate Tribunal,
Chennai Bench 'D',
Rajaji Bhavan,
Besant Nagar, Chennai - 600 090.

+2 Ccs to M/s.G.R. Associates sr 6064, 6065.
+2 Ccs to Mr.A.P.Srinivas, Advocate sr 6425, 6424.

W.P. Nos. 5264 of 2011 & 3011 of 2012
and
M.P. Nos.2 of 2011 & 2 of 2012

VSNII(CO)
SP(15/03/2021)

सत्यमेव जयते
WEB COPY

https://hcservices.ecourts.gov.in/hcservices/