IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2021

CORAM

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Writ Appeal No.1483 of 2021
and
C.M.P.No.9456 of 2021

Veeran Ambiga .. Appellant/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/Respondents

Prayer: Appeal under Clause 15 of Letters Patent against the order dated 09.02.2021 in W.P.No.625 of 2020 and set aside the same.

Prayer in W.P.No.625 of 2020: Writ of a writ of certiari to Call for the entire records pertaining to the exparte best judgement assessment for the assessment year 2017-2018 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 aginst the principles of natural justice.

For Appellant : Mr.P.C.Harikumar

For Respondents : Mr.A.N.R.Jayaprathap, for Standing Counsel

JUDGMENT

(Delivered by T.S.Sivagnanam, J.)

This Writ Appeal, by the appellant-assessee, is directed against the order dated 09.02.2021, in W.P.No.625 of 2020.

2.The appellant-assessee challenged the order dated 26.11.2019, which was a best of judgment assessment under Section 144 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act' for brevity). The learned Single Bench dismissed the Writ Petition on the ground that the appellant, despite receipt of the notices, did not participate in the assessment proceedings and therefore, there was no error in the Assessing Officer's proceeding to complete the assessment on best of judgment basis. At the time, when the Writ Appeal came up for admission, we passed the following order to enable the Revenue to establish that notices and the draft order were duly served on the assessee:-

> “Heard Mr.P.C.Hari Kumar, learned counsel for the appellant.
>
> 2.The short issue for consideration in this appeal is whether the appellant/assessee was served with the notice under Section 142(1) of the Income Tax Act, 1961, ("the Act" for brevity), dated 14.02.2018, whether he was served with the Show Cause Notice, dated 20.05.2019, and Pre-Assessment Draft Order, dated 16.09.2018. If the respondent/Department is able to produce the records to show proof of service of the notice under Section 142(1) of the Act, dated 14.02.2018, there is no error in proceeding under Section 144, in the light of the second proviso to Section 144(1) of the Act.
>
> 3.Mr.A.N.R.Jayaprathap, learned Standing Counsel, accepts notice for the respondent and he is directed to get the assessment file and show proof of service of notice on the

appellant/assessee.

4.In the light of the above, there shall be an order of interim stay till the next date of hearing.

List on 18.08.2021.”

3.The Revenue has produced the original file and photocopies of the relevant documents in the form of a typed set of papers from which, we find that the notice dated 14.02.2018 issued under Section 142(1)(i) of the Act was sent by Registered Post with Acknowledgement and has been received by the assessee on 24.02.2018. The hearing notice dated 20.05.2019 was also sent by Registered Post with Acknowledgement and the appellant-assessee has received the same on 25.05.2019. By a communication dated 16.09.2019, the Assessing Officer communicated the draft assessment order under Section 144 of the Act and gave one final opportunity to the assessee to file his explanation, if any, by 27.09.2019. This was communicated by Registered Post with Acknowledgement and received by the assessee on 27.09.2019. Thus, the notices and the draft assessment order have been communicated to the appellant and the appellant, despite having received the same, has not cooperated with the assessment proceedings and therefore, we find that there is no error in the order passed by the learned Writ Court.

4.In the result, the Writ Appeal fails and is dismissed. Taking note of the fact that the Writ Petition was filed within 30 days from the date of receipt of the assessment order dated 26.11.2019, we grant liberty to the appellant-assessee to file an appeal before the Commissioner of Income Tax (Appeals), within a period of 30 days from the date of receipt of a copy of this judgment. If the same is done, the appellate authority shall entertain the appeal without rejecting the same on the ground of limitation. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-V)

// True Copy //

Sub Assistant Registrar

abr

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.

3.The Commissioner of Income-tax (Appeals), Chennai.
(To return the original assessment order on returning a copy of it)

Copy to
The Section Officer, ER Section, High Court, Madras.

+1CC to M/s.P.C.Hari Kumar & Associates, Advocate, SR.No. 47041

W.A.No.1483 of 2021

SJ(CO)
B.VC (25/10/2021)