IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :20.07.2021

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.16897 of 2018
and
W.M.P.No.20094 of 2018

P.Saravanan ...Petitioner

Vs

1.The Income Tax Officer,
Ward – 2(1)
Erode – 638 001.

2.The Manager,
The Lakshmi Vilas Bank,
Gobichettipalayam Branch,
Erode.

3.The Superintendent of Police,
Erode District,
Erode. ... Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India to issue of Writ of Certiorarified Mandamus, calling for the records relating to Assessment order dated 21.12.2016 on the file of the 1st respondent made against the petitioner for the Assessment Year 2012-13 and to quash the same and consequently, to direct the 3rd respondent to take to initiate appropriate and effective criminal action on the petitioner's Criminal Complaints dated 28.10.2017, 09.11.2017 and 20.02.2018 within the time that may be fixed by this Hon'ble Court.

For Petitioner : Mr.R.Nandhakumar

For Respondents R1 : Mr.A.P.Srinivas
Senior Standing counsel
For Income Tax

R2 – Mr.R.Kannan
R3 - No appearance

ORDER

The order of assessment dated 21.12.2016 passed by the respondent with reference to the Assessment Year 2012-13 is under challenge in the present writ petition.

2. The petitioner states that he was engaged in a self-employment by doing Agarbatti retail sales to small shops in Gopi and also in public places through his Bi-cycle and out of the very meager income derived from it, the petitioner was leading his family.

3. The learned counsel for the petitioner made a submission that the petitioner was impersonated and he is not even an income tax assessee. He has no income, so as to assessed to tax and therefore, the order of assessment was passed, without considering the facts and circumstances. The petitioner is a poor person and his Bank account was fraudulently transacted by some other person and he was impersonated and the order of assessment impugned was passed in his name. He has no means even to pay the tax determined in the impugned order of assessment.

4. The learned Senior Standing counsel objected the said contention by stating that mere statement in this regard would be insufficient to establish the case of the writ petitioner. The facts and circumstances were already adjudicated by the respondents and an order of assessment was passed. Therefore, the statement of the petitioner in the present writ petition need not be taken into consideration.

5. As rightly pointed out, this Court cannot determine the facts with reference to the affidavit filed by the petitioner. The facts regarding the impersonation are to be adjudicated with reference to the documents and evidences to be produced by the petitioner before the competent authority. High Court cannot conduct a Roving enquiry in respect of the disputed facts, which is to be done by the competent authority on verification of the original records. In the present case, the petitioner has stated that regarding impersonation, he filed a Criminal Case in FIR.No.26/2018 and the Police also filed a final report on 01.12.2020 and the report is also in his favour. However, the report finally concludes that 'Further action dropped'. Therefore, the contends and the facts and circumstances as well as the investigation conducted are to be scrutinized by the Income tax authorities independently based on the other records made available.

6. Thus, this Court is inclined to grant one more opportunity to the writ petitioner to establish his case in the interest of justice. Accordingly, the impugned order of assessment passed by the respondent in proceedings dated 21.12.2016 is quashed and the matter is remanded back to the first respondent for fresh adjudication. The first respondent shall consider all the facts and circumstances as well as the documents and evidences independently by affording opportunity to the writ petitioner and accordingly, pass a fresh order as expeditiously as possible.

7. With these directions, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Income Tax Officer,
Ward - 2(1), Erode - 638 001.

2.The Manager,
The Lakshmi Vilas Bank,
Gobichettipalayam Branch, Erode.

3.The Superintendent of Police,
Erode District,
Erode.

+1cc to Mr.A.P.Srinivas, Advocate Sr.35031
+1cc to Mr.R.Nandhakumar, Advocate Sr.34794

W.P.No.16897 of 2018

svi[co]
srg 16/08/2021