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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.24130 of 2021
and
W.M.P.No.25438 of 2021

(Through Video Conferencing)

Pachayappan,
S/o.Ramanujam ... Petitioner

Vs

The Income Tax Officer (Ward 1),
Office of the Income Tax Officer Ward 1,
No.1, Chairman Subbrayar Street,
West Shanmugapuram,
Villupuram. ... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records relating to the impugned assessment order dated 28.09.2021 made in DIN No. ITBA/AST/M/147/2021-2022/1035987695(1) and quash the same.

For Petitioner : Mr.D.R.Arun Kumar

For Respondent : Mr.A.N.R.Jayapratap
Junior Standing Counsel

ORDER

The petitioner has challenged the impugned Assessment Order dated 28.09.2021.

2. It is the case of the petitioner that the impugned Assessment Order has been passed without considering the documents furnished by the petitioner to substantiate that the petitioner acted only as a middleman in the auctions conducted by the Banks in auctioning the tractors which were financed by

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the Banks to various farmers who were defaulted.

3. It is submitted that the petitioner has produced all the certificates from individual buyers to the effect that the petitioner only acted as a middleman and that there was no tax liability and that the petitioner was unaware of the tax liability under the Income Tax Act, 1961. It is therefore submitted that the impugned order has been passed by the respondent by invoking Section 144 read with Section 69A of the Income Tax Act, 1961 was liable to be quashed.

4. The learned counsel for the petitioner has placed reliance on the decision of this Court rendered in Anuradha Vs The Income Tax Officer, Villupuram passed in W.P.No.22807 of 2021 vide its order dated 25.10.2021.

5. It is the further case of the petitioner that under similar circumstances the Court considered the plight of a Worker employed under the Mahatma Gandhi National Rural Employment Scheme and granted relief by directing the respondent to reconsider the case and pass a appropriate order after considering the evidence on record. The learned counsel for the petitioner submits that similar relief may be granted to the petitioner in this case also.

6. Opposing the prayer in this writ petition, the learned Junior Standing Counsel for the respondent submits that the petitioner was issued with a notice under Section 148 of the Income Tax Act, 1961. However, the petitioner failed to file the returns despite the receipt of the aforesaid notice. It is further submitted that the petitioner also failed to file a reply after the informations were called for and finally discharge of the assessment, the petitioner responded.

7. Since no records and proper accounts were maintained, the respondent was justified in invoking Section 69A read with Section 144AD of the Income Tax Act, 1961. It is further submitted that the petitioner has an alternate remedy by way of an appeal under Section 246A of the Income Tax Act, 1961 before the Commissioner of Income Tax (Appeals) and therefore submitted that the writ petition is liable to be dismissed.

8. Heard the learned counsel for the petitioner and the learned Junior Standing Counsel for the respondent. I have perused the impugned orders passed by this Court in somewhat identical case in W.P.No.22807 of 2021 which was cited by the learned counsel for the petitioner.

9. The impugned order has not discussed the records furnished by the petitioner to distance himself from the entire

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liability. Therefore, to that extent, the impugned order can be interfered by remitting the case back to the respondent to pass a proper assessment order. However, it is noticed that the petitioner has himself offered to pay the tax under Section 44AD of the Income Tax Act, 1961 on the undiscussed income of Rs.22,42,300/-.

10. Considering the above, the impugned order is set aside subject to the petitioner paying tax as per the computation under Section 44AD of the Income Tax Act, 1961 within a period of six weeks from the date of receipt of a copy of this order. After the petitioner deposits the admitted tax under Section 144AD of the Income Tax Act, 1961, the respondent shall pass a fresh assessment order on merits and in accordance with law within a period of four weeks thereafter.

11. This Writ Petition stands disposed of with the above observations. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

arb/nst

To

The Income Tax Officer (Ward 1),
Office of the Income Tax Officer Ward 1,
No.1, Chairman Subbrayar Street,
West Shanmugapuram,
Villupuram.

+1cc to M/s.D.R.Arun Kumar, Advocate, S.R.No.65932

+1cc to M/s.A.P.Srinivas, Advocate, S.R.No.65481

W.P.No.24130 of 2021
and
W.M.P.No.25438 of 2021

RGN(CO)
SU(04/01/2022)