IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.06.2021

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.34149 of 2018
and
W.M.P.No.39681 and 39683 of 2018

S.Zahir Hussain ...Petitioner

Vs

1.The Commissioner of Income Tax (Appeals-10),
Non-Corporate Ward 9(5),
Aayakar Bhavan, Office of the
Income Tax, Chennai-600 034.

2.Mr.Parimelalagan
The then Income Tax Officer,
Non-Corporate Ward 9(5),
Aayakar Bhavan, Office of the
Income Tax, Chennai-600 034.

3.Ms.Vaidehi,
The Income Tax Officer,
Non-Corporate Ward 9(5),
Aayakar Bhavan, Office of the
Income Tax, Chennai-600 034.

4.V.Nandakumar (IRS),
Joint Commissioner of IT,
Non Corporate Ward 9,
Chennai.

5.DIT (Vigilance) South,
New No.45, Old No.108,
M.G.Road, Nungambakkam,
Chennai-600 034.

6.Income Tax Officer (V)-II,
Office of Director General of Income Tax (Vigilance),
2nd Floor, Jawaharlal Nehru Stadium,
New Delhi-110 003.

7.Commissioner of Income Tax,
Non Corporate Ward 9(5),
Aayakar Bhavan, Warnarpathy Block 2nd Floor,
No-121, Uthamar Gandhi Salai, Chennai-600 034.

8.The Director General of Income Tax,
(Vigilance) and Chief Vigilance Officer (DGIT(V)),
Head Quarters, JLN Stadium, Lodhi Road,
New Delhi-110 003.
(R8 Suo-motu impleaded vide
order dated 10.09.2020 made in
W.P.No.34149 of 2018. ...Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the 7th Respondent to appoint a new assessing officer to conduct fresh enquiry in respect of the reopening of the assessment for assessment year 2010-11 as requested vide letter dated 31.03.2018 and prohibiting the Respondents from claiming any demand pursuant to order dated 30.12.2018 passed by the 2nd Respondent and order dated 22.10.2018 passed by the 1st Respondent till the investigation is completed by the new assessing officer.

For Petitioner : Mrs.Abitha Banu

For R1, R5 to R7 : Mrs.Hema Muralikrishnan
Senior Standing Counsel for Income Tax

O R D E R

The relief sought for in the present writ petition is to direct the 7th Respondent to appoint a new Assessing Officer to conduct fresh enquiry in respect of reopening of the assessment for Assessment Year 2010-11 as requested vide letter dated 31.03.2018 and prohibiting the Respondents 3 and 4 from claiming any demand pursuant to order dated 30.12.2018 passed by the 2nd Respondent and order dated 22.10.2018 passed by the 1st Respondent till the investigation is completed by the new Assessing Officer.

2.The petitioner is an Income Tax assessee. He filed his Returns regularly. More specifically, Return of income for Assessment Year 2010-11 was filed. The petitioner claims that he is a whistle blower and submitted his representations from time to time right from the year 2001 to various Departments. The petitioner is a RTI activist and his grievances are that the reopening of assessment made by the 3rd respondent by invoking Section 147 of the Income Tax Act are improper and contrary to the Audit Wing Report holding that further actions are to be dropped.

3.The learned counsel for the petitioner reiterated that the Audit Wing of the Income Tax Department passed an order dropping all further actions and inspite of the order, the 3rd

Respondent proceeded against the writ petitioner by reopening the assessment.

4.The learned counsel for the petitioner raised the point that even the order of the Audit Wing has not been furnished to the writ petitioner, despite the request made. Several other allegations are raised against the 3rd and 4th respondent for bias.

5.In this regard, this Court passed an order dated 25.09.2020 to complete the enquiry and submit the enquiry report in a sealed cover before this Court. The Principal Director General of Income Tax (Vigilance) & Chief Vigilance Officer, New Delhi, has appointed Dr.Amlan Tripathy, Additional Director General (Vigilance) (East Zone), stationed at Kolkata, as the Vigilance Officer to enquire into the petitioner's complaint. The said Vigilance Officer conducted a detailed enquiry and submitted his report in a sealed cover. The report of the Vigilance Officer would reveal that the allegations of mala-fide and bias are not established. However, the fact remains that re-assessment order has already been passed during the interregnum period and the petitioner preferred an appeal which is pending before the Income Tax Appellate Tribunal, Chennai Bench.

6.With reference to the prayer sought for in the present writ petition, this Court is of the considered opinion that the 3rd respondent is no more handling the files of the writ petitioner and the re-assessment order also had been passed and an appeal is also filed by the petitioner which is pending before the Income Tax Appellate Tribunal, Chennai Bench. The Vigilance Report submitted in a sealed cover would reveal that the allegations of bias or mala-fide are not established against the respondents 3 and 4. Thus, the petitioner is at liberty to raise all other grounds on merits raised in the writ petition before the Income Tax Appellate Tribunal, at the time of adjudication of the appeal and the petitioner has to seek necessary reliefs by following the procedures contemplated.

7. With these observations, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

8. With reference to the Report of the Vigilance Commissioner in a sealed cover, the respective learned counsels for the petitioner and the respondent Department were allowed to peruse in entirety. Both the respective learned counsels Mrs.Abitha Banu and Mrs.Hema Muralikrishnan, learned Standing Counsel for the Income Tax Department, perused the entire Vigilance Report by taking considerable length of time. Thus, no further deliberation is required with reference to the

Vigilance Report. In view of this, the Vigilance Report submitted in a sealed cover is handed over to Mrs.Hema Muralikrishnan, learned Standing Counsel for the Income Tax Department, who in turn acknowledged the Report which is to be handed over to the concerned Officials of the Income Tax Department.

Sd/-
Assistant Registrar (AR-V)

//True Copy//

Sub Assistant Registrar

ssn/mkn

To

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Chennai-600 034.

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+1cc to Mrs.Hema Muralikrishna, Advocate, S.R.No.30506

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UM(CO)
RVM(28/07/2021)