BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED :**19.04.2021**
CORAM
THE HONOURABLE MRS.JUSTICE J.NISHA BANU
W.P(MD)No.8036 of 2021

Smt.G.Zainab Banu ... Petitioner

Vs.

The Assistant Commissioner of Income Tax,
Non Corporate Ward, Circle – 3,
Income Tax Office,
Madurai. ... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondent to consider the representation dated 06.11.2019 and issue direction to the respondent to allow the petitioner for the inspection of the records and take copies of the documents including the report of Deputy / Assistant Director of Investigation based on which the assessments were re-opened within a stipulated period.

For Petitioner : Mr.S.Karunakar
For Respondent : Mrs.M.Parameshwari for
Mrs.S.Srimathy,
Special Government Pleader

ORDER

This writ petition has been filed by the petitioner seeking for issuance of a Writ of Mandamus directing the respondent to consider the representation dated 06.11.2019 within a stipulated period and to allow the petitioner to inspect the records and take copies of the documents including the report of Deputy / Assistant Director of Investigation based on which the assessments were re-opened.

2. The brief facts of the case are as follows:

(i) The son of the petitioner by name G.Ubaidur Rahman was a Stock Consultant and was an individual assessee on the file of the respondent holding PAN No.AAZPU0395D under the Income Tax Act, 1961. According to the petitioner, the returns were not filed by her son under Section 139 of the Income Tax Act, 1961, for the assessment year 2012-13 and therefore, the respondent received interim report regarding the enquiry conducted by the Assistant Director of Income Tax (Investigation), Unit-1, Madurai and based on the said report, the respondent had re-opened the assessment for the assessment years 2012-13, 2013-14, 2014-15 and 2015-16 by issuing notice under Section 148 of the Income Tax Act, 1961, dated 10.08.2017, 27.06.2017, 04.07.2017 and 27.06.2017 respectively. On receipt of such notice, the petitioner's son had filed the income tax return for the assessment year 2012-13.

(ii) Subsequently, the respondent had selected the case of the petitioner's son for scrutiny for the assessment years 2012-13, 2013-14, 2014-15 and 2015-16 and passed orders under Section 143(3) r/w Section 147 of the Act, raising demands.

(iii) Aggrieved by the said assessment orders, the petitioner's son had filed appeals before the Commissioner of Income Tax(Appeals) -1, Madurai and the same are pending consideration. In the said appeals, certain grounds have been raised regarding the validity of the assumption of jurisdiction under Section 147 / 148 of the Income Tax Act, 1961.

(iv) Further, the petitioner's son had also challenged the validity of re-opening of the assessments on the ground that there is no independent application of mind and therefore, he had sent a representation to the respondent on 06.11.2019 requesting to allow him to inspect the Income Tax Records for the assessment years 2012-13, 2013-14 and 2015-16 and also to take copies wherever required including the report of the Deputy / Assistant Director of Investigation based on which the assessments were re-opened and completed as per the CBDT's Circular No.17(XL-36) dated 28.06.1965.

(v) Thereafter, after submitting his representation, the petitioner's son had repeatedly approached the respondent in person, but the documents were not given to him for inspection. In the meantime, he expired on 16.06.2020 due to cardiac arrest. Hence, the petitioner as the mother and legal heir of late.G.Ubaidur Rahman, has filed this writ petition with the aforesaid prayer.

3. The learned counsel appearing for the petitioner would state that no opportunity was given either to her son or the petitioner, to inspect the records and take copies of the documents, by considering the representation of the petitioner's son dated 06.11.2019 and therefore, an opportunity should have been given to the petitioner to inspect the documents.

4. Heard the learned Special Government Pleader appearing for the respondent also, who would state that the representation of the petitioner's son will be considered, in accordance with law.

5. In view of the same, the respondent is directed to dispose of the representation of the petitioner's son, dated 06.11.2019, on merits and in accordance with law, by affording an opportunity of hearing to the petitioner, within a period of six weeks from the date of receipt of a copy of this order.

6. With the above direction, the writ petition is disposed of. No Costs.

Sd/-
Assistant Registrar (T&P)

// True Copy //

/ /2021
Sub Assistant Registrar(CS)

pm
Note:(i) In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:
The Assistant Commissioner of Income Tax,
Non Corporate Ward, Circle - 3,
Income Tax Office,
Madurai.

+1 CC to M/s.S.SRIMATHY, Advocate (SR-16387[F] dated 19/04/2021)

+1 CC to M/s.S.KARUNAKAR, Advocate (SR-16418[F] dated 19/04/2021)

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