IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17.10.2022

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THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.No.45 of 2020
and WMP Nos.49, 51 and 53 of 2020

Arunachalam Chettiar Narayanan
Valli Palaniappan
No.1, 2nd Cross Street,
CIT Colony, Mylapore,
Chennai – 600 004.

... Petitioner

Vs

The Assessing Officer,
Income Tax Department,
Office of the Income Tax Officer,
Non Corp. Ward 1(2) Che
Room No.306, Wanaparthy Block – I
2nd Floor, Chennai – Wanaparthy Block
No.121, Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the respondent comprised in the impugned assessment order No.ITBA/AST/S/143(3)/2019-20/1022657220(1) dated 19.12.2019 passed under Section 143(3) of the Income Tax Act, 1961 and all consequential notices issued thereto, including Demand Notice No.ITBA/AST/S/156/2019-20/1022657277(1) dated 19.12.2019 issued under section 156 of the Income

Tax Act, 1961 and Notice No.ITBA/PNL/S/270A/2019-20/1022658837(1) dated 19.12.2019 issued under section 274 read with 270A of the Income tax Act, 1961 and quash the same as violative of the principles of natural justice, illegal, arbitrary, unconstitutional and consequently remand the matter to the respondent and direct the respondent to afford an opportunity of hearing to the petitioner before taking any steps whatsoever to re-assess the income of the petitioner for PAN:AAGPV2239Q with respect to the AY 2017-2018.

For Petitioner : Mr.Satish Parasaran
Senior Counsel
for Mr.R.Parthasarathy

For Respondents : Mrs.Hema Muralikrishnan
Senior Standing Counsel

O R D E R

The petitioner challenges an order of assessment dated 19.12.2019, passed under the provisions of the Income Tax Act, 1961 (in short 'Act'), relatable to assessment year 2017-18.

2. Mr.Satish Parasaran, learned Senior Counsel appearing for Mr.R.Parthasarathy, learned counsel on record for the petitioner would assail the order specifically on the violation of principlesof natural justice. He would point out that the assessment was taken up for hearing sometime in July, 2019 and questionnaires were issued calling for various particulars from the petitioner. The details requested were furnished.

3. The issue on merits relates to the claim of exemption from long term capital gains. The notices issued during the periods of July, August and November, 2019 were complied with and responded to promptly. All particulars sought were furnished by the petitioner.

4. While this is so, a notice was issued, both electronically as well as by post, in December, 2019, to which, admittedly, the petitioner did not respond. The reason cited before this Court to justify non-compliance, is medical inability. The notice was dated 12.12.2019 and has been sent electronically to the e-mail address of the petitioner, which figured in the return of income.

5. However, the petitioner points out that in the portal, the addresses set out for communication, both primary as well as secondary, are that of the Chartered Accountant and not that of the petitioner. Thus, notwithstanding that the return contained her e-mail id, she would submit that the correspondence in regard to the assessment proceedings ought to have been with the Chartered Accountant.

6. It is desirable that the Department issue correspondences to all e-mail ids that are available on record, both in the return as well as in the portal to ensure that all channels of communication are kept open. Notices/summons/questionnaires must be issued to all available e-mail ids

including any set out in the return of income as well as in the portal in the required fields. This has, admittedly, not been done in this case.

7. That apart, show cause notice dated 12.12.2019, sent by post, listing the matter for personal hearing on 16.12.2019, has been received by the petitioner on 14.12.2019. The impugned order of assessment has come to be passed on 19.12.2019 without further reference to the petitioner. Hence, I am of the considered view that the time granted for compliance is, to say the least, inadequate.

8. The petitioner has also furnished an additional typed set dated 06.01.2019 furnishing certain medical records between the period 12.12.2019 and 20.12.2019 that point to existence of a medical disability during that period. This further supports her case regarding the lack of opportunity afforded for completion of assessment.

9. In light of the discussion as above, I am of the view that the impugned order fails and the same is set aside. The petitioner will file its reply to show cause notice dated 12.12.2019 as well as to the conclusions in the impugned order of assessment dated 19.12.2019, within a period of (4) weeks from date of receipt of a copy of this order and the website will be enabled to receive the reply of the petitioner.

10. Upon receipt of the reply, a link for personal hearing shall be issued to the petitioner, the petitioner heard and an order of assessment passed thereafter. The entire exercise shall be completed within a period of sixteen (16) weeks from date of receipt of a copy of this order.

11. This Writ Petition is allowed in the above terms. No costs. Connected Miscellaneous Petitions are closed.

17.10.2022

Index : Yes / No
Speaking/non-speaking Order
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To

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Dr.ANITA SUMANTH,J.

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