IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.1641 of 2022
and
W.M.P.Nos.1788 & 1789 of 2022

Mrs.Bernard Veilankanni Shema Priya ...Petitioner

-Vs-

The Assessing Officer
Non Corp Ward 17(7)
Chennai. ...Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the respondent in passing the impugned assessment order dated 26.12.2018 in Order No.ITBA/AST/144/2018-19/1014579636(1) and remand back the same to the Assessing Authority.

For Petitioner : Mr.N.Muralikumaran
for McGAN Law Firm

For Respondents : Mr.D.Prabhu Mukunth Arun Kumar
Junior Standing Counsel
for Income Tax

O R D E R

The petitioner/assessee has been issued with an assessment order for Assessment Year 2016-17 on 26.12.2018. Challenging the same, the present writ petition has been filed.

2. Mr.N.Muralikumaran, learned counsel appearing for the petitioner would contend that, even though notice under Section 142(1) of the Income Tax Act, 1961 (In short, 'the Act') was issued four times; on 11.02.2018, 17.10.2018, 13.12.2018 and ultimately on 26.12.2018, the date on which the order impugned was passed, those notices claimed to have been sent by the Revenue to the assessee through email were deemed to have been received by the petitioner.

3. However, the fact remains that, the petitioner was diagnosed with brain Tuberculosis sometime in the year 2016 onwards, as her health condition deteriorated from 2016 and ultimately a life saving surgery was suggested, which in fact the petitioner underwent on 05.02.2020.

4. Therefore, during this period, ie., in the year 2018, in which the notices were issued, which has culminated in the impugned assessment order, the petitioner was totally indisposed as she was not able to work or move, except to go to the hospital that too with the help of others. Therefore, she could not reply to the notices referred to above through email and ultimately the impugned order of assessment has been passed.

5. As against the said impugned order, though an attempt has been made by the petitioner to stay the operation of the order before going for an appeal, the Income Tax Officer has rejected the plea by communication dated 11.01.2022 directing the petitioner to approach the Principal Commissioner for Income Tax, Chennai-8 by filing an appeal / stay petition.

6. Only in these circumstances, the petitioner has approached this Court seeking a remand order from this Court to remand the issue for re-assessment by giving an opportunity to the petitioner to put forth her case / defence and in this regard, within a shortest possible time, the Court can also fix a date with the consent of the other side and on that date the petitioner would be able to appear before the Assessing Officer to file all those documents necessary to take the defence.

7. However, Mr.D.Prabhu Mukunth Arunkumar, learned Junior Standing Counsel for Income Tax, on instructions would submit that, as has been accepted or admitted by the petitioner / assessee Section 142(1) notices were issued at least four times to the assessee from February 2018 till December 2018 and on all those occasions, the petitioner was not chosen to reply or appear before the assessing authority. Therefore, ultimately the impugned assessment order was passed on 26.12.2018.

8. Citing these facts and circumstances, the learned Standing Counsel would contend that, as against the order of assessment, if at all the petitioner wants to file an appeal, she is free to file an appeal before the appellate authority. Without resorting to filing an appeal since the petitioner has approached the Income Tax Officer to issue a stay order against the impugned order ie., the assessment order, that was rejected by the Income Tax Officer, of course rightly, since that approach itself has been made by the assessee after two years of the passing of the assessment order.

9. Even now, it is open to the petitioner/assessee to work out her remedy. The petitioner has approached this Court by filing the present writ petition assailing the order of assessment on the ground that she has not been given an opportunity, whereas enough opportunities have been given to the petitioner. Moreover, as per the medical document, which is relied upon by the petitioner, only sometime in the year 2019 she was diagnosed with some health issues, before which there were no such issues. The column 'Past History' shows 'NIL' as per the doctor's report. Therefore, whatever claim made by the petitioner through her counsel that the petitioner's health condition was deteriorated which ultimately ended in life saving surgery in February 2020, cannot be accepted as those reasons on health issues cannot stand in the way, because all those episodes have taken place sometime between February 2018 and December 2018. Therefore, on the ground of alleged ill health of the assessee, the defence taken by the petitioner to assail the impugned order successfully, cannot be countenanced, he contended.

10. I have heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents and have perused the materials placed on record.

11. It is the case of the petitioner that, from 2016 onwards her health condition has deteriorated. No doubt, the actual diagnosis shows that she suffered from Brain Tuberculosis sometime in the year 2019. Even prior to that, according to the petitioner, she suffered a lot. Therefore, she could not concentrate on anything, especially when the notices were issued four times, she was not well and thus she was not able to reply to such notices. Now, the learned counsel for the petitioner made a fervent appeal before this Court that, if one last chance is given to the petitioner at least now, by remanding the matter to the assessing officer, certainly without fail the petitioner would be able to appear before the assessing officer, as even though her health condition has not been fully recovered, to some extent her health condition has improved and she would be able to appear before the assessing authority. Therefore, the learned counsel for the petitioner seeks the indulgence of this Court in this regard.

12. Though this move by the learned counsel for the petitioner is stoutly opposed by the learned Standing Counsel, this Court is of the considered view that, since health reason has been cited in support of which, some documents from the medical side have been produced, where it is a fact that the assessee underwent a life saving surgery on 05.02.2020, before which, in early 2019 she was diagnosed that she suffered Brain Tuberculosis and it is the definite claim on the part of the

petitioner that the petitioner's health condition had deteriorated even earlier, this Court, on the only ground of the health condition of the petitioner/assessee, is of the view that, the matter can be remanded back to the assessing authority for reconsideration with one condition that on the date to be fixed by this Court the assessee shall appear and file her defence and statements with counter to the satisfaction of the respondent revenue.

13. In that view of the matter, this Court is inclined to dispose of this writ petition with the following order.

(a) The impugned order dated 26.12.2018, for the reasons stated above, is set aside and the matter is remanded back to the respondent assessing authority.

(b) The National Faceless Assessment Centre (NFAC) shall open the portal enabling the petitioner/assessee to file her defence / documents within a period of two weeks from the date of receipt of a copy of this order.

(c) On such permission by opening the portal by NFAC, the petitioner shall upload her defence without fail within the time stipulated and thereafter, the NFAC shall give a personal hearing to the petitioner through video conference within two weeks thereafter.

(d) On the date to be fixed for personal hearing through video conference, the petitioner/assessee shall, without fail, appear through video conference and submit her defence.

(e) After completing this exercise, the final assessment order shall be passed by the assessing authority thereafter.

14. With these directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

KST

To

The Assessing Officer
Non Corp Ward 17(7)
Chennai.

+1cc to M/s.Hema Muralikumaran , Advocate, S.R.No.7965
+1cc to M/s. McGAN Law Firm, Advocate, S.R.No.7849

W.P.No. 1641 of 2022

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NSK 10/02/2022