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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.02.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.2362 of 2022
and W.M.P.Nos.2520 & 2522 of 2022

Balamurugan ...Petitioner

-Vs-

1. The Additional / Joint / Deputy / Assistant Commissioner of Income Tax / Income Tax Officer, National Faceless Assessment Circle, New Delhi.

2. The Income Tax Officer Non-Corporate Ward 4(3) 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 1st respondent in his proceedings vide PAN APGPB3576H-DIN/ITBA/AST/S/1472021-22/1035699200(1) and quash the impugned order dated 18.09.2021.

For Petitioner : Mr. B.Raveendran

For Respondents : Mrs.Hema Muralikrishnan
Senior Standing Counsel

O R D E R

The prayer sought for herein is for a Writ of Certiorari to call for the records of the 1st respondent in his proceedings vide PAN APGPB3576H-DIN/ITBA/AST/S/1472021-22/1035699200(1) and quash the impugned order dated 18.09.2021.

2. The petitioner is an individual assessee being assessed under the Income Tax Act, 1961 (hereinafter referred to as 'the Act') on the file of the second respondent. Insofar as the

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financial year 2012-13, though the assessee has not filed return in 2013-14, subsequently it was found that the assessee has received a salary of Rs.3,32,450/- and also has incurred expenditure through credit card for a sum of Rs.13,12,013/-. Therefore, a notice under Section 148 of the Act was issued to the assessee on 23.03.2020 through electronic mode. The reason stated for reopening the assessment is that, there has been an escaped assessment.

3. In this regard, according to the Revenue, even though the petitioner had filed returns for the assessment years 2015-16 to 2018-19 and also the assessee had admitted the income from salary during the assessment year, insofar as the said salary as well as the spending made through credit card during the assessment year 2013-14 is concerned, that has not been since disclosed, it was treated to be an escaped assessment. Therefore, notice under Section 148 of the Act dated 23.03.2020 followed by notice under Section 142(1) dated 24.02.2021 claimed to have been issued by the Revenue and according to the Revenue, since there has been no response to the said notices, the Revenue was left with no other option except to process the case under 'best judgment assessment' under Section 144 of the Act. Accordingly after proceeding with the said assessment, the respondents ultimately passed the 'best judgment assessment' order dated 18.09.2021, which is under challenge in this writ petition.

4. Mr.B.Raveendran, learned counsel for the petitioner would submit that, insofar as the merits of the case is concerned, though the petitioner has got some presentable case, those points are not agitated before this Court, as it is a matter to be decided before the appellate authority, provided the petitioner chooses to file an appeal.

5. However, the reason for the petitioner/assessee to approach this Court by invoking the extraordinary jurisdiction under Article 226 of the Constitution of India is mainly on two grounds. First is that, no notice under Section 148 as well as Section 142(1) of the Act claimed to have been sent through electronic mode has been received or served on the petitioner.

6. The second ground according to the petitioner is that, since the case is covered under the Faceless Assessment Scheme 2019, the procedure contemplated under the Standard Operating Procedure (SOP) issued by the Revenue in this regard has not been followed.

7. In this context, the learned counsel would contend that, there should have been a verification by the verification unit, even assuming that the assessee has not responded to the notice.

Even that verification has not been done, as nothing is stated in the impugned order about such verification.

8. Moreover, before passing the order of assessment, which is impugned herein, there should have been a draft assessment, which should have been sent or forwarded to the petitioner/assessee, which has also not been done in the case of the petitioner. Therefore, for all these statutory violations, which according to the petitioner, is a glaring violation of the principles of natural justice, the petitioner is entitled to challenge the impugned assessment order before this Court in the present writ petition.

9. Heard Mrs.Hema Muralikrishnan, learned Senior Standing Counsel appearing for the respondent Revenue, who would submit that, the Faceless Assessment Scheme was introduced in the year 2019 and that the Scheme itself is in nascent stage and in order to ensure proper procedure to be followed by following the principles of natural justice without violating the same at any juncture, a detailed and exhaustive Standard Operating Procedure (SOP) has been issued on 19.11.2020. In this Faceless Assessment Scheme, three units of the Revenue ie., the Income Tax Department ie., the Assessment Wing, Verification Wing as well as Technical Wing are involved and at each and every stage, there will be coordination among the three wings by the nodal agency, who undertakes the Faceless Assessment Scheme and accordingly every assessee's case is quickly processed in a maximum period of nine months.

10. However in the present case, it is the claim of the petitioner that, the notices under Section 148 and 142(1) of the Act claimed to have been sent by the Revenue electronically have not been received by the petitioner. On that ground, the issue can be re-agitated once again, for which the Revenue would be making efforts to send those notices once again.

11. Insofar as the draft assessment order to be served on the petitioner is concerned, if that has not been followed, that would also be followed. Therefore, for rectification of all these discrepancies pointed out by the petitioner, though the same is not accepted by the respondent Revenue, for the sake of early disposal of the issue for completion of the assessment for the year 2013-14, for which admittedly the petitioner had not filed the return, the issue can be remanded, learned Standing Counsel for the Revenue contended.

12. I have considered the submissions made by the learned counsel for the petitioner as well as the learned Standing Counsel for the Revenue and have perused the materials placed on record.

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13. On the ground that the notices claimed to have been sent electronically under Section 148 and 142(1) dated 23.02.2020 and 24.02.2021, according to the petitioner, those notices have not been served on him, even through electronic mode, ie., to the registered email ID of the petitioner. It is the further case of the petitioner that the draft assessment order should have been issued if it is Section 148 proceedings. Therefore, that has also not been done in this case.

14. In respect of these two grounds mainly raised by the petitioner's side, there is no contrary record produced before this Court by the Revenue to overcome the ground or plea raised by the petitioner.

15. Therefore, this Court is of the view that, in order to give a proper opportunity to the petitioner to respond by availing the chance of getting the notices under the provisions referred to above under the Income Tax Act, the issue can be remanded back to the respondents.

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

- That the impugned assessment order dated 18.09.2021 is set aside and the matter is remanded back to the respondents for re-consideration and while reconsidering the issue, the Revenue shall scrupulously follow the procedures including the Standard Operating Procedure (SOP) issued in this regard under the Faceless Assessment Scheme by giving all notices, which should have been given to the assessee and after ensuring that those notices reached the assessee, they can proceed to finalize the issue and pass the assessment order. The needful as indicated above shall be undertaken as early as possible.

- It is made clear that, once the notices as indicated above, is served on the petitioner either through electronic mode or otherwise, on receipt of the same, the petitioner avail the opportunity and shall respond to such notices. Failing to respond to such notices will automatically entail the Revenue to proceed with the matter without giving any further chances to the petitioner.

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17. With the above observations and directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

KST

To

1. The Additional / Joint / Deputy / Assistant Commissioner of Income Tax / Income Tax Officer, National Faceless Assessment Circle, New Delhi.

2. The Income Tax Officer
   Non-Corporate Ward 4(3)
   Chennai.

+1cc to Mr.B.Raveendran, Advocate SR. No.8902
+1cc to M/s.Hema Muralikrishnan, Advocate SR. No.8900

W.P.No. 2362 of 2022

GJ (CO)
PR (07/03/2022)

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