IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **19.12.2022**

CORAM

**THE HONOURABLE MR.JUSTICE M.SUNDAR**

**W.P.No.4279 of 2020**
**&**
**W.M.P.No.5064 of 2020**

Manikandan Kalpana .. Petitioner

Vs.

The Income Tax Officer,
Ward – 2(4), TPR,
Tirupur – Income Tax Office,
121, 60 Feet Road,
Tirupur – Income Tax Office,
Tirupur – 641 602. .. Respondent

Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records in ITBA/AST/S/144/2019-20/1022435461(1) dated 16.12.2019 on the file of the respondent relating to A.Y.2017-18 and quash the same.

| | | |
|---|---|---|
| For Petitioner | : | Ms.Sree Laksmi Valli<br>for Mr.M.P.Senthilkumar |
| For Respondent | : | Ms.S.Premalatha<br>Junior Standing Counsel<br>(Income Tax) |

**ORDER**

Captioned writ petition has been filed by an assessee under 'the Income Tax Act, 1961' (hereinafter 'IT Act' for the sake of brevity, convenience and clarity) assailing an 'assessment order dated 16.12.2019' made by the sole respondent in the captioned writ petition (hereinafter 'impugned order' for the sake of brevity, convenience and clarity). To be noted, impugned order has been made by the sole respondent under Section 144 of IT Act by resorting to Best judgment assessment.

2. The writ petitioner has deposited huge sums of money after demonetisation regime kicked in. Such deposits in the bank account of the writ petitioner have been treated as unexplained income under Section 69A of IT Act in the impugned order.

3. Notwithstanding very many averments in the writ affidavit, learned counsel predicates her submission on one pivotal point and that is the writ petitioner had in fact responded to the Section 142 (1) notice dated 30.11.2017 by way of return on 15.04.2019 but the respondent has not taken note of that. More importantly, learned counsel for writ petitioner submits that the

responses of the writ petitioner dated 16.09.2019 and 19.09.2019 have not been considered. This has been articulated in paragraphs 3 and 4 of the writ affidavit which read as follows:

> *'3.I state that the I had submitted in the Income Tax portal in April 2019 that one of the two Bank Accounts, namely, A/c No.31563192600 in State Bank of India, Manapet, Pondicherry does not belong to me. This was again reiterated vide letter dated 16.09.2019 in response to Notice dated 05.09.2019.*
>
> *4.I state that in response to notice dated 05.09.2019 issued by the Respondent, filed exhaustive details under the letter of the Authorized Representatives dated 19.09.2019 further to the letter dated 16.09.2019.'*

4. In response to the submission made by learned counsel for writ petitioner, Ms.S.Premalatha, learned junior standing counsel for the respondent draws the attention of this Court to counter affidavit dated 28.03.2020 filed by the sole respondent. Learned Revenue counsel draws the attention of this Court

particularly to paragraph 4 of the counter affidavit which reads as follows:

> *'4. I submit in reply to para 3 & 4, None of the responses of the petitioner submitted online, as mentioned in the table in Sl.No.5,9 and 10 i.e. Dated 0n April 2019, 16.09.19 & 19.09.19, were reflected in the e-proceeding functionality of the department, after the PAN got migrated from Circle-2, Tirupur to Ward – 2(4), Tirupur. The Respondent was not aware of the responses filed by the petitioner,as the same was not reflected in the ITBA (Income-tax Business Application) portal. This was merely a technical problem in the system which cropped up on migration of the PAN. I submit that this technical problem could not be highlighted during the course of assessment proceedings or before passing the assessment order, as the Respondent was not aware that the petitioner had already uploaded the details. As the case was getting barred by limitation of time, the assessment order was finally passed on*

*16.12.2019, after confirming that the petitioner has not responded to any of the notices/letters issued from the department.'*

5. The above makes it clear that it is the contention of the respondent that the respondent could not look into the responses of the writ petitioner solely because of technical glitch at the respondent's end.

6. The question as to whether an opportunity should be given to the assessee by the assessing officer by giving a notice and calling upon the assessee to show cause when Section 142(1) notice has been issued is left open as in the case on hand the respondent had admitted in the counter affidavit that notice has been issued and the responses of the writ petitioner could not be looked into solely owing to technical glitch at the respondent's end. Therefore, this order is being made in the unique fact setting and circumstances of the present case.

7. It is also to be noted that the writ petitioner further contends that the writ petitioner is running a petrol bunk and there is a window available in this regard qua demonetisation.

Therefore, this order will obviously not serve as precedent for Best judgment assessment orders under Section 144 where Section 142 (1) notice has been issued. In other words, this order is in the light of the admitted position of the respondent in paragraph 4 of the counter affidavit.

8. Owing to the narrative, discussion and dispositive reasoning supra the following order is made:

(a) The impugned assessment order dated 16.12.2019 bearing Ref. No.ITBA/AST/S/144/2019-20/1022435461(1) is set aside solely on the ground that the respondent has admitted that the responses of the writ petitioner could not be looked into owing to technical glitch at the respondent's end;

(b) A sequitur to the previous limb of this order though obvious it is made clear that this Court has not expressed any view or opinion on merits of the matter and that all questions are left open for being considered when the respondent embarks upon the *de novo* exercise;

(c) Denovo assessment exercise shall be commenced by the respondent forthwith. The respondent shall take into account the aforementioned responses of the writ petitioner (dated 16.09.2019 and 19.09.2019) pass orders afresh on merits and in accordance with law, as expeditiously as the business of the respondent would permit and in any event within a period of six weeks from today i.e., by 30.01.2023.

9. Captioned writ petition is disposed of with the aforementioned directives. Consequently, captioned W.M.P. is disposed of as closed. There shall be no order as to costs.

19.12.2022
(½)

Index:Yes/No
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To

The Income Tax Officer,
Ward – 2(4), TPR,
Tirupur – Income Tax Office,
121, 60 Feet Road, Tirupur – Income Tax Office,
Tirupur – 641 602.

**M.SUNDAR.J.,**

mmi

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