IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.04.2022

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.7967 of 2022
and
W.M.P.Nos.7955 & 7956 of 2022

Gayathri Baliga ... Petitioner

Vs

1.Income Tax Officer,
Non-Corporate Ward 3(1), Chennai
Wanaparthy Block, No.121, Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034.

2.National Faceless Assessment Centre, Delhi
Represented by Additional/Joint/Deputy/
Assistant Commissioner of Income Tax,
Room No.401, 2nd Floor, E-Ramp,
Jawaharlal Nehru Stadium,
Delhi - 110 003.

3.M/s.Baliga Lighting Company (Since Dissolved)
Represented by its erstwhile partner, Mr.Ramesh Baliga,
No.63A, CP Ramaswamy Road,
Alwarpet, Chennai - 600 018.

4.Deputy Commissioner of Income Tax,
Non-Corporate Circle 3(1), Chennai
Wanaparthy Block, No.121, Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034. ... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned notice u/s.148 dated 31/03/2021 having DIN & Notice No.ITBA/AST/S/148/2020-21/1032044573(1) for Asst. Year 2017-18 issued by the 1st respondent and the consequential proceeding and order contained in the notice u/s.142(1) dated 14/03/2022 having DIN:ITBA/AST/F/142(1)/2021-22/1040693142(1) for Asst. Year 2017-18 issued by the 2nd respondent and quash the same as it is against law and direct the 4th respondent to shift the petitioner's share of taxes, which was paid by the 3rd respondent firm (including TDS), to the account of the petitioner on the file of the 1st respondent and such shifted tax payments should be considered as tax payments made by the petitioner on 31/03/2017.

For Petitioner : Mr.K.Ravi

For Respondents 1, 2 & 4 : Mr.D.Prabhu Mukunth Arunkumar Junior Standing Counsel

ORDER

The prayer sought for herein is for a writ of certiorarified mandamus to call for the records pertaining to the impugned notice u/s.148 dated 31/03/2021 having DIN & Notice No.ITBA/AST/S/148/ 2020-21/1032044573(1) for Asst. Year 2017-18 issued by the 1st respondent and the consequential proceeding and order contained in the notice u/s.142(1) dated 14/03/2022 having DIN:ITBA/AST/F/142(1)/ 2021-22/1040693142(1) for Asst. Year 2017-18 issued by the 2nd respondent and quash the same as it is against law and direct the 4th respondent to shift the petitioner's share of taxes, which was paid by the 3rd respondent firm (including TDS), to the account of the petitioner on the file of the 1st respondent and such shifted tax payments should be considered as tax payments made by the petitioner on 31/03/2017.

2. In this writ petition, in respect of assessment year 2017-18, the Revenue wanted to reopen it under Section 147 of the Income Tax Act, 1961 (in short 'the Act'). Notice under Section 148 of the Act was issued thereafter on disclosure of the reason by the Revenue for reopening objections had been raised by the assessee and those objections had been rejected.

3. As against the same, this writ petition has been filed challenging the rejection of objection as well as the notice under Section 148 of the Act.

4. Before this case was taken up for hearing, it seems that, on 30.03.2022 assessment order had been passed under 147 of the Act and this has been brought to the notice of this Court both by the learned counsel for the petitioner as well as Mr.D.Prabhu Mukunth Arunkumar, learned Standing Counsel appearing for the respondent Revenue.

5. Once an assessment order has been passed, this Court since has taken a consistent view that, the assessee can be relegated to go before the Appellate Authority for challenging the assessment order.

6. In this case also, since assessment order has been passed, the assessee has to go before the Appellate Authority.

7. However, Mr.K.Ravi, learned counsel appearing for the petitioner has raised certain grounds, under which, he points out that, the Assessing Authority does not have any jurisdiction to invoke Section 147. Therefore, when there is no jurisdiction on the part of the Assessing Authority to reopen under Section 147 of the Act and in this regard, objections raised since were rejected which are the subject matter in this writ petition, the subsequent assessment orders cannot be directed to be assailed before the Appellate Authority, he contended.

8.I have considered the said stand taken by the learned counsel for the petitioner/assessee.

9. Insofar as the point raised by the petitioner with regard to the jurisdiction of the Assessing Authority to reopen under Section 147 itself is concerned, the same can also be adjudicated before the Appellate Authority. While filing appeal against the assessment order, where, the jurisdiction point can be raised as a preliminary issue. Once such preliminary issue is raised, the same can be considered and decided on merits as a preliminary issue by the Appellate Authority before going to the merits of the impugned assessment order.

10. Since these arguments were made in respect of a similar case, where also, assessment orders recently have been passed under Section 147 of the Act and the same view was taken in that case also. Therefore, a similar order is to be passed in this case. Accordingly, this writ petition is disposed of with the following directions:

> “That the petitioner is relegated to approach the Appellate Authority, i.e., Commissioner (Appeal) to file appeal against the assessment order. While filing appeal, it is open to the petitioner to raise the jurisdiction point as a preliminary issue before the Appellate Authority and if such a preliminary issue is raised, the same shall be considered and decided on merits as a preliminary issue by the Appellate Authority after giving an opportunity of being heard to the petitioner assessee before going into the merits of the assessment order. Once the preliminary issue is decided, depending upon the outcome of the same, the assessee as well as the Revenue can workout their remedy in accordance with law.

11. With these directions and observations, the petitioner

since has been relegated to go before the Appellate Authority, this Writ Petition is disposed of accordingly. No costs.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

Sgl

To

1.Income Tax Officer,
Non-Corporate Ward 3(1), Chennai
Wanaparthy Block, No.121, Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034.

2.The Additional/Joint/Deputy/
Assistant Commissioner of Income Tax,
National Faceless Assessment Centre, Delhi
Room No.401, 2nd Floor, E-Ramp,
Jawaharlal Nehru Stadium,
Delhi – 110 003.

3.Deputy Commissioner of Income Tax,
Non-Corporate Circle 3(1), Chennai
Wanaparthy Block, No.121, Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034.

+1cc to M/s.Hema Muralikrishnan, Advocate, S.R.No.22503

W.P. No.7967 of 2022

SR-II(CO)
SB(15/06/2022)