IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.03.2022

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.7874 of 2022
and
W.M.P.Nos.7871 & 7873 of 2022

P.Radha ...Petitioner

Vs

The Additional/Joint/Deputy/
Assistant Commissioner of Income Tax,
National Faceless Assessment Centre,
New Delhi. ...Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, call for the records of the respondent in ITBA/PNL/F/271(1)(c) / 2021 - 22 / 1040829071(1) - PAN AGEPR2737H and quash the impugned order dated 16.03.2022.

For Petitioner : Mr.B.Raveendran

For Respondent : Mr.ANR.Jayapratap
Junior Standing Counsel

ORDER

The prayer sought for herein is for a Writ of Certiorari, to call for the records of the respondent in ITBA/PNL/F/271(1)(c) / 2021 - 22 / 1040829071(1) - PAN AGEPR2737H and quash the impugned order dated 16.03.2022.

2.In respect of the Assessment Year 2011-12 under the Income Tax Act, 1961, [in short 'the Act'], assessment order was passed, which was appealed under Section 263 of the Act, where the Principal Commissioner has passed an order on 23.03.2022, whereby the assessment order has been set aside and the matter was remitted back to the Assessing authority for reconsideration. The relevant portion of the order dated 23.03.2022 reads thus:

> “8.Since the AO had not examined the above issue of cash deposit in two accounts maintained by the assessee with Kotak Mahindra Bank Ltd., totaling to Rs.26,41,000 and omission to bring the same to

taxation, renders the assessment order passed supra, renders itself erroneous, in sofaras, it is prejudicial to the interest of revenue. In order to remedy the said error in the order of assessment in the instant case made on 20-12-2019 for the assessment year 2017-18, the recourse would be to resort to provisions of Sec.263 of the Act. Accordingly, the order of the AO dated 20-12-2019 for the assessment year 2017-18 in the case of the captioned assessee is set aside, in exercise of the powers vested in me u/s.263 of the Act.

9.The Assessing Officer, is hereby, directed to re-do the assessment afresh on the above issues after due verification of the facts as discussed above. The assessment order is set aside to consider the above issues and the AO may satisfy himself in accordance with law and come to a logical conclusion in respect of the above and pass appropriate orders in the assessee's case. The Assessing Officer shall give adequate opportunity of being heard to the assessee in this regard before passing the fresh assessment order. The Assessee is also given yet another opportunity to present its case and shall provide the relevant details with material evidence, so as to facilitate the Assessing Officer to arrive at a logical conclusion in accordance with law.”

3.In fact, as against the assessment order, parallelly the petitioner filed a writ petition in W.P.No.26995 of 2021, which is stated to be pending before this Court. However, by virtue of the present order dated 23.03.2022, the prayer sought for therein would become infructuous.

4.Be that as it may, now the issue is that, the Assessing Authority, by invoking Section 271 (1) (c) of the Act, has passed a penalty proceedings dated 16.03.2022.

5.Since this impugned communication i.e., the order under Section 271 (1) (c) of the Act was issued on 16.03.2022 i.e., prior to the order passed by the Principal Commissioner under Section 263 of the Act, under which, the very assessment order itself has been set aside, this Court feels that, the impugned order passed under Section 271 (1) (c) of the Act dated 16.03.2022 would not stand in the legal scrutiny.

6.Heard Mr.B.Raveendran, learned counsel for the petitioner as well as Mr.ANR.Jayapratap, learned Junior Standing Counsel appearing for the Revenue.

7.The learned counsel appearing for the Revenue would submit that, now the assessment order since has been set aside and the matter is remitted back by the Principal Commissioner by his order dated 23.03.2022, it is now on the part of the Assessing officer to redo the exercise and pass a fresh assessment order and once, the fresh assessment order is passed, based on which, the power of Assessing Authority to invoke Section 271 (1) (c) of the Act for imposing penalty would be intact and the same may be permitted to be invoked, he contended.

8.I have considered the said submissions made by learned counsel appearing for both parties and have perused the materials placed before this Court.

9.In view of the order passed by the Principal Commissioner dated 23.03.2022, where the assessment order itself was set aside and the matter was remitted back to the Assessing Authority for reconsideration, the earlier proceedings dated 16.03.2022 i.e., the order impugned under Section 271 (1) (c) of the Act for penalty does not survive. Therefore, on that ground, the said order is liable to be set aside. Accordingly, it is set aside.

10.It is now open to the Assessing Authority to go ahead with the assessment pursuant to the remand order dated 23.03.2022 of the Principal Commissioner and it is needless to mention that, once the assessment order is made, the Assessing Authority can also invoke Section 271 (1) (c) of the Act for imposing penalty, if that situation arises in future.

11.It is needless to mention that, during the reassessment proceedings, pursuant to the remand order, whatever the defence and input to be made by the assessee can be taken into account. Accordingly, the reassessment process can go on and be completed on its own and independently, without having influence over the earlier assessment order passed by the Assessing officer.

12.With these observations, this writ petition is ordered accordingly. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

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To

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

+1cc to Mr.B.Raveendran, Advocate, S.R.No.21672

W.P.No.7874 of 2022

CA(CO)
RGA(20/05/2022)