IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.10201 of 2022
and
W.M.P.Nos.9905 and 9906 of 2022

Vijaya Manjju Annithaa
Rep. by her Power Agent
Mr.D.Vijaya Raamakrisnaa
New No.75, Old No.35/2,
Dr.Natesan Road,
Triplicane,
Chennai - 600 005. …. Petitioner

-Vs-

1. The Additional / Joint / Deputy / Assistant Commissioner of Income Tax / Income Tax Officer,
National e-assessment Centre, Delhi.

2. Income Tax Officer
Non-Corp Ward 9(1), Chennai
Chennai - Wanaparthy Block,
No.121, Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034. …. Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records on the file of the first respondent and quash the impugned order in ITBA/AST/S/147/2021-22/1041994978(1), dated 29.03.2022 under Section 147 read with Section 144B of the Income Tax Act, 1961 passed by the first respondent for the Assessment Year 2014-15.

For Petitioner : Mr.Raghav Rajeev

For Respondents : Mr.D.Prabhu Mukunth Arunkumar
Junior Standing counsel

ORDER

The petitioner is an assessee under the respondents. In respect of Assessment Year 2014-15, the Revenue wanted to re-assess by reopening the case under Section 147 of the Income Tax

Act, 1961 (in short "the Act").

2. Therefore a notice under Section 148 was issued, ultimately, the Assessment proceedings went on. After completing the assessment, before passing the final order, final show cause notice was issued on 26.03.2022 at 14.39 hrs giving time to the petitioner assessee to respond up to 28.03.2022 at 23.59 hrs.

3. In response to the same, when the petitioner made an attempt through e-governance, i.e., e-portal of the Revenue to file the reply and to seek for personal hearing at about 12.55 p.m on 28.03.2022, the portal already has been closed and the closing information has also been made. Taking a screen shot of the same, the petitioner filed those documents in the typed set of papers to canvass the point that even before the short date of two days given by the Revenue to respond for the show cause notice, the portal was closed, therefore, absolutely there had been no chance for the petitioner either to file a reply or to seek for a personal hearing by way of video conference, therefore it is the violation of principles of natural justice. Therefore on that ground, he challenged the impugned order of assessment, dated 29.03.2022.

4. Heard Mr.Raghav Rajeev, learned counsel appearing for the petitioner who reiterated the aforestated and heard Mr.D.Prabhu Mukunth Arunkumar, learned Junior Standing counsel appearing for the respondents who would submit that, even in respect of the earlier notice under Section 142(1) of the Act, already a detailed reply has been given, that has been considered, which is reflected in the impugned order, dated 29.03.2022, therefore, insofar as the petitioner's case is concerned, enough opportunity had been given, hence on the ground of alleged violation of principles of natural justice, the impugned order cannot be challenged successfully, he contended.

5. I have considered the said rival submissions made by both sides and have perused the materials placed before this Court.

6. Be that as it may, the last final show cause notice was issued on 26.03.2022, giving time up to 28.03.2022 at 23.59 hours. Before the closing time when the petitioner made an attempt on 28.03.2022 at 12.55 hours, the portal was closed, therefore the petitioner's last chance of filing the reply to the show cause notice and asking for personal hearing by way of video conference was denied, therefore, it can very well be construed as violation of principles of natural justice, hence, this Court is inclined to dispose of this writ petition with the following order :

(i) That the impugned order is set aside and the matter is remitted back to the respondent Revenue for reconsideration.

(ii) In this process, the petitioner assessee shall treat the show cause notice, dated 26.03.2022 as a fresh show cause notice as no new show cause notice can once again be issued by the Revenue and accordingly, it is open to the petitioner to respond to the said show cause notice by giving a reply and also seek for a personal hearing through video conference within a period of two weeks from the date of receipt of a copy of this order.

(iii) Once such a reply is filed within the time and seek for any personal hearing, that can also be considered and granted to the petitioner and thereafter, the Revenue can proceed to pass orders on merits.

7. With these observation and direction, this writ petition is ordered accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

tsvn

To

1. The Additional / Joint / Deputy / Assistant Commissioner
of Income Tax / Income Tax Officer,
National e-assessment Centre, Delhi.

2. Income Tax Officer
Non-Corp Ward 9(1), Chennai
Chennai - Wanaparthy Block,
No.121, Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034.

+1cc to Mr.Hema Muralikrishnan, Advocate, S.R.No.28804

W.P.No.10201 of 2022

NR(CO)
GN(24/05/2022)