IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.9852 of 2022
&
W.M.P.Nos.9565 & 9568 of 2022

S.Balasubramanian ... Petitioner

-Vs-

1. The Assistant Commissioner of Income Tax,
   Coimbatore.

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

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorary, calling for the records relating to the proceedings in respect of assessment order of the 2nd Respondent dated 29.03.2022 in respect of PAN No. AAT PB 8569J for the assessment year 2016-2017, the notice of demand of the 2nd Respondent in respect of PAN No. AAT PB 8569J under section 156 of the Income Tax 1961 for the assessment year 2016-2017 and the notice for penalty dated 29.03.2022 of the 2nd Respondent for the assessment Year 2016 - 2017 and quash the same.

For Petitioner : Mr.AR.L.Sundaresan, Senior Advocate
for Mrs. A.L.Ganthimathi

For Respondents: Mr.A.P.Srinivas, Senior Standing Counsel

O R D E R

The prayer sought for herein is for a writ of Certiorari, calling for the records relating to the proceedings in respect of assessment order of the 2nd Respondent dated 29.03.2022 in respect of PAN No. AAT PB 8569J for the assessment year 2016-2017, the notice of demand of the 2nd Respondent in respect of PAN No. AAT PB 8569J under section 156 of the Income Tax 1961 for the assessment year 2016-2017 and the notice for penalty dated 29.03.2022 of the 2nd Respondent for the assessment Year 2016 - 2017 and quash the same.

2. In respect of assessment year 2016-17, in order to re-open the assessment under Section 147 of the Income Tax Act 1961 (in short 'the Act'), notice under Section 148 was issued, thereafter the assessment proceedings went on. Ultimately, after completing the assessment, before passing the final assessment order, as per the procedure contemplated, the Revenue issued final show cause notice with draft assessment order on 27.03.2022, whereby, the Revenue directed the petitioner assessee to respond through the registered E-filing Account by 23.59 hours of 28.03.2022.

3. On receipt of such final show cause notice through E-Portal, the petitioner claims that, though the petitioner made an attempt to respond, the web portal could not be accessed by the petitioner and in the mean while, the one day time also was over and on 29.03.2022, the assessment order which is impugned herein was passed. Therefore, challenging the said order on the ground that, no proper opportunity was given to the petitioner to respond for the final show cause notice, the petitioner has assailed the impugned order of assessment.

4. Mr.AR.L.Sundaresan, learned Senior counsel, made submissions in support of his contentions and would further submit that, if a reasonable opportunity is given to the petitioner assessee, certainly, the petitioner assessee would be able to respond to the final show cause notice and thereafter, the Revenue can proceed further and to pass orders in accordance with law.

5. Heard Mr.A.P.Srinivas, learned Senior Standing Counsel appearing for the respondent Revenue, who would submit that, it is not the first time notice was given on 27.03.2022, well in advance notices were issued under 142 (1) of the Act and the petitioner also had responded, the present notice dated 27.03.2022 is only a draft assessment order. Therefore, if at all the petitioner wants to accept it, he will get the benefit foregoing the penalty to be finally imposed against him. Hence at this juncture, by raising the said ground that the one day time given to the petitioner was not enough to respond, may not be justifiable. Therefore, on that ground, the impugned order cannot be successfully assailed by the petitioner, he contended.

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

7. As has been pointed out by the learned Senior counsel appearing for the petitioner, whether it is a final show cause notice or draft assessment order, it has been issued only on 27.03.2022 after 21:57 hours and time was given to the assessee only up to 23:59 hours on 28.03.2022. First of all, this shortest time given to the assessee may not be justifiable on the part of the Revenue, as within the short time normally it cannot be expected from an assessee to respond.

8. Moreover, it is a complaint of the petitioner assessee that within the time stipulated, even though attempt was made by the assessee, he could not get access with the web portal and this has been averred by the petitioner assessee in the affidavit filed in support of this writ petition.

9. In view of these infirmities, as this can very well be construed as a violation of principles of natural justice, this Court is inclined to dispose of this writ petition with the following orders :

> (i) That the impugned order is set aside, and the matter is remitted back to the Revenue with a direction to give fresh final show cause notice to the petitioner by giving two weeks time to respond. On receipt of such notice, it is open to the petitioner assessee to respond and thereafter let the Revenue proceed and pass orders of assessment in accordance with law.
>
> It is made clear that insofar as the notice to be further given is concerned, the notice dated 27.03.2022 shall be treated as a fresh notice which can be responded by the assessee within two weeks from the date of receipt of copy of this order.

10. With these directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Deputy Registrar(CS)

//True copy//

Sub Assistant Registrar

sha/sgl

To

1. The Assistant Commissioner of Income Tax,
Coimbatore.

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

+1cc to Mrs.A.L.Ganthimathi, Advocate SR.No.28204

+1cc to Mr.A.P.Srinivas, Advocate SR.No.28069

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&
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RSV(CO)
GMY(12/05/2022)