IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.04.2022
CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition Nos.10045 & 10049 of 2022
and
W.M.P.Nos.9749, 9750, 9754 & 9755 of 2022

G.Ravisankar
S/o.Govindarajalu ...Petitioner in both W.Ps.

Vs.

Income Tax Officer,
Income Tax Department,
Office of the Income Tax Officer,
Non Corp Ward 19(6) Chennai,
No.121, Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034. ...Respondent in both W.Ps.

Common Prayer: Writ Petition filed under Section 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records of the impugned Order in DIN & Notice No.ITBA/AST/F/148A/2021-22/1043240166(1) & No.ITBA/AST/F/ 148-1/2021-22/1042356112(1) dated 31.03.2022 for Assessment Year 2015-2016 from the files of the respondent herein, quash the same.

For Petitioner : Ms.Aparna Nandakumar
[in both petitions]

For Respondent : Mrs.Hema Muralikrishnan
[in both petitions]

COMMON ORDER

The issue raised in these writ petitions are interconnected and common, therefore with the consent of learned counsel appearing on both sides, these writ petitions were heard together and are disposed of by this common order.

2. That in respect of Assessment Year 2015-2016, the Revenue was in believe that there was an escaped assessment of tax against the assessee, therefore in order to issue notice under Section 148 of the Income Tax Act, 1961 [in short, “the Act”] in order to comply with the provisions as contemplated under

Section 148A of the Act, issued a notice on 17.03.2022 giving time upto 21.03.2022 to the petitioner/assessee to respond.

3. The said notice, though was claimed by the Revenue that has been sent through E-governance, it is a stand of the assessee that he had not received through E-governance. However, the same notice dated 17.03.2022 was served on the petitioner by RPAD on 24.03.2022.

4. On receipt of the said notice as stated above, the petitioner/assessee had sent a communication on 25.03.2022 stating that since the petitioner/assessee was out of station at that time, he needed two weeks time to respond with supporting documents.

5. The said request made by the petitioner/assessee was sent to the Assessing Officer through RPAD, which also was received and acknowledged by the Assessing Officer on 26.03.2022.

6. However, the Assessing Officer had proceeded to complete the enquiry and passing orders under Section 148A of the Act. By thus, an order has been passed on 31.03.2022 deciding that notice under Section 148A of the Act can be issued to the assessee. The said order passed under Section 148A of the Act deciding to issue notice under Section 148, dated 31.03.2022 is under Challenge in W.P.No.10045 of 2022.

7. As a sequel, on the same date i.e., 31.03.2022 notice under Section 148 was issued by the Revenue to the assessee, that is under challenge in W.P.No.10049 of 2022.

8. Assailing the said order in the first writ petition i.e., order passed under Section 148A of the Act, Mrs.Aparna Nandakumar, learned counsel for the petitioner pointed out that, though it was claimed by the Revenue that the notice dated 17.03.2022 was sent through E-governance, the petitioner has not received it and he only received it through Registered post, which he has received on 24.03.2022, immediately he had sent a communication on 25.03.2022 requesting the Revenue to give two more weeks time to respond.

9. Though the said request having been received by the Assessing Authority on 26.03.2022 itself, on 31.03.2022 they passed the impugned order, wherein it has been stated that the assessee did not file any reply even though notice was served through E-mail to the petitioner/assessee. Therefore, the request made by the petitioner/assessee seeking further time of two weeks had not at all been considered and it has been stated in the impugned order that, as if the petitioner has not filed any reply. Hence, the learned counsel submits that, it is a

violation of the principles of natural justice therefore on that ground, the impugned order is vitiated.

10. However, Mrs.Hema Muralikrishnan, learned Senior Standing Counsel appearing for the respondent/Revenue would submit that, insofar as sending a notice to an assessee on either mode i.e., by E-governance or by RPAD or by personal service that can be adopted and it is possible under the provisions of the Act. However, insofar as the reply to be made by the assessee in response to the notice issued by the Revenue is concerned, that shall be made only by E-governance i.e., through E-portal of the Department, which alone could be relied upon by the Assessing Authority before finalizing any decision, therefore the request letter claimed to have been made by the petitioner/assessee seeking two weeks further time dated 25.03.2022 since admittedly has been made only through RPAD, the same could not have reached the Appellate Authority or if it could have been reached, the same could not have been relied upon by the Appellate Authority before passing any order invoking Section 148A of the Act, that is how the present impugned order has been passed. Therefore, in this context, it cannot be blamed that the procedure in principle of natural justice is violated in this case. In view of the same, the impugned order is sustained, she contended.

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

12. There is one infirmity, which was pointed out by the learned counsel appearing for the petitioner that, notice received by the petitioner on 24.03.2022 was responded by letter dated 25.03.2022 requesting two weeks time and the said request was reached the respondent Assessing Authority, who signed the postal acknowledgment, which has been filed in the typed-set of papers, despite this, Assessing Authority has taken a stand that reply has not been sent by the petitioner/assessee.

13. In this context, even though the learned Standing Counsel has taken a stand that whatever the reply given or request made by the assessee that should be made only by E-governance and all other mode of sending reply would be ignored or would not be taken into account by the Revenue is concerned, this Court feel that, once a communication is sent by any assessee to the Revenue that too by registered post with acknowledgment due, the due consideration is always expected to be given by the addressee, without which, if such kind of reply or documents or inputs received from the assessee or any one is ignored on the only ground that it has not been sent through e-portal, certainly it would amount to violation of principle of

natural justice. Therefore on that ground, these impugned orders are liable to be interfered with.

14. That apart, Sub-Section (b) of Section 148 makes it clear that while serving a notice on the assessee to show cause, even such time may be specified in the notice being not less than 7 days and not exceeding 30 days from the date on which the said notice is issued. Therefore, sub-Section(b) of Section 148 contemplates that, a minimum of 7 days notice must be given.

15. Herein a case in hand, notice dated 17.03.2022 was issued giving time upto 21.03.2022 therefore, the minimum 7 days since has not been given in this case, on that ground also consequential proceedings, which is impugned herein is vitiated and it can be interfered with.

16. In that view of the matter, this Court is inclined to dispose of these writ petitions with the following orders:

- That the impugned order in W.P.No.10045 of 2022 is hereby set aside. As a sequel, the impugned order in W.P.No.10049 of 2022 is also set aside and the matter is remitted back to the respondent. While redoing the exercise, it is open to the respondent to issue a notice afresh under Section 148B giving not less than 7days to the petitioner/assessee to respond and on receipt of the same, the petitioner shall respond by giving their reply or inputs within the time stipulated therein.
- In this regard, it is made clear that as far as possible, the assessee, since the E-governance is in practice, has to give his reply only through E-governance. Therefore, the defence that it has been sent only through registered post may not be taken in this case in future.

With these observations and directions, both the writ petitions are disposed of accordingly. No costs. Connected miscellaneous petitions are closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

mp

To

The Income Tax Officer,
Income Tax Department,
Office of the Income Tax Officer,
Non Corp Ward 19(6) Chennai,
No.121, Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034.

+1 CC to M/s. Aparna Nandakumar, Advocate sr 27461
+1 CC to M/s. Hema Muralikrishnan, Advocate sr 27452.

W.P.Nos.10045 & 10049 of 2022

RP(CO)
SP(26/04/2022)