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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition Nos.10307 & 10309 of 2022
and W.M.P.Nos.10020, 10021, 10022, 10023,
10028, 10029, 10030 & 10031 of 2022

Ponnambalam Murugaraj
Represented by Power of Attorney Holder
Parthasarathy Murali, Flat No.10
Door No.15/9, MRC Flats, East Elliamman
Koil Street, Kottur, Chennai 600 085.
...Petitioner in both W.Ps.

-Vs-

1. The Deputy Commissioner of Income Tax
   National E-assessment Centre, Delhi
   E-Ramp, Jawaharlal Nehru Stadium
   Delhi- 110 003.

2. The Income Tax Officer
   Ward 1, Income Tax Department
   Nagapattinam, Tamil Nadu 611 001.

3. The Principal Commissioner of Income Tax
   Madurai-1, Income Tax Department
   Madurai, Tamilnadu – 625 002.
...Respondents in both W.Ps

Prayer in W.P.No.10307 of 2022 : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the writ petitioner company on the file of the first respondent to quash the impugned order dated 27.03.2022 passed u/s 147 r.w.s 144 and 144B of the Act for the Assessment Year 2015-16 in ITBA/ AST/ S/ 147/ 2021-22/1041746837(1).

Prayer in W.P.No.10309 of 2022 : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the writ petitioner company on the file of the first respondent to quash the impugned order dated 27.03.2022 passed u/s 147 r.w.s 144B of the Act for the Assessment Year 2017-18 in ITBA/ AST/ S/ 147/ 2021-22/1041746284(1).

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In Both W.Ps

For Petitioner : Mr.A.S.Sriraman

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

O R D E R

The petitioner claims to be a Non-Resident Indian (NRI) and during the relevant Financial Years ie., 2014-15 and 2016-17 corresponding to Assessment Years 2015-16 and 2017-18, he claims that he has been out of country for most of days in the financial year except few days, where he had multiple visits and stayed in India for only couple of days. Therefore, he need not file any ITR under the provisions of the Income Tax Act, 1961 (In short 'the Act').

2. Despite the same, the respondent Revenue, in the process of assessment under Section 147 read with Section 144 and 144B of the Act, had passed an assessment order on 27.03.2022 stating that, the petitioner had not given details to establish the fact that he was an NRI during the relevant financial years.

3. However the fact remains that the petitioner, by his reply dated 22.03.2022, had given the travel details of the petitioner for the two financial years viz., 2014-15 and 2016-17 corresponding to assessment years 2015-16 and 2017-18. Insofar as the financial year 2014-15, out of the 365 days only 27 days he has been in India and in respect of financial year 2016-17, out of 365 days he was in India for only 41 days. These details have been given in the reply dated 22.03.2022. In both the cases, despite this reply given, the same has not been considered or not considered in proper perspective and they stated that as if the petitioner has not given the travel details to substantiate his contention that he was an NRI and therefore he need not file the ITR for the relevant assessment years.

4. The aforesaid facts has been reiterated by the learned counsel for the petitioner and he seeks the indulgence of this Court against the impugned orders of assessment dated 27.03.2022.

5. Heard Mr.D.Prabhu Mukunth Arunkumar, learned Junior Standing Counsel appearing for the Revenue, who would submit that, though the travel details had been submitted, in order to substantiate the said contention that he had been out of country for most of the days in the relevant financial year, mere claim of travel dates may not be justifiable to come to a safe

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conclusion that he has been out of country and therefore, in order to substantiate the same, since no sufficient documents have been filed, the Revenue had come to a conclusion that his claim of NRI status for the relevant financial years cannot be extended to the petitioner.

6. I have considered the submissions made by the learned counsel on either side and have perused the materials placed on record.

7. In both the cases, on 22.03.2022 the travel details of the petitioner has been clearly mentioned which is as per the remarks made in the passport of the petitioner that only 27 days and 41 days respectively in these two financial years the petitioner had been in India and rest of the time for both the years he had been outside India. Therefore, that itself is enough to prove that he had not been in India for most of the days in the relevant financial years and accordingly a decision should have been made by the Revenue.

8. Instead, the Revenue had stated in the impugned order that, the assessee has not given any details to substantiate his claim. The said finding given by the Revenue, in the considered opinion of this Court, is not justifiable and the arbitrary exercise of power by the Revenue in not considering the factual matrix is nothing but violation of principles of natural justice, as the personal hearing through video conference has also not been considered and granted to the petitioner. Therefore, this Court has no hesitation to hold that, this is a case, where there is violation of principles of natural justice.

9. In that view of the matter, this Court is inclined to dispose of these writ petitions with the following order.

- The respective impugned orders in these writ petitions are set aside and the matters are remitted back to the Revenue for reconsideration.

- While reconsidering the same, the reply given by the petitioner dated 22.03.2022 shall be considered by the Revenue and in this regard, a personal hearing through video conference can also be provided to the petitioner by giving a date within two weeks from the date of receipt of this order.

- On the date fixed by the Revenue for personal hearing, the petitioner shall appear before the Revenue and explain the details in support of his claim that he was a NRI during the relevant financial years.

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- After completing this exercise, the Revenue can pass final orders in this regard.

10. With the above directions, these writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

KST

To

1. The Deputy Commissioner of Income Tax
   National E-assessment Centre, Delhi
   E-Ramp, Jawaharlal Nehru Stadium
   Delhi- 110 003.

2. The Income Tax Officer
   Ward 1, Income Tax Department
   Nagapattinam, Tamil Nadu 611 001.

3. The Principal Commissioner of Income Tax
   Madurai-1, Income Tax Department
   Madurai, Tamilnadu – 625 002.

+1cc to Mr.S.Sridhar, Advocate SR. No. 29912
+1cc to M/s.Hema Murali Krishnan, Advocate SR. No. 29224

W.P.Nos. 10307 & 10309 of 2022

RR (CO)
PR (21/06/2022)

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