IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.04.2022

CORAM:

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.10368 of 2022
and
WMP.No.10088 of 2022

Mrs.Anitha Radhakrishnan
W/o. Mr.T.Radhakrishnan ...Petitioner

vs.

1. The Central Board of Direct Taxes,
Through its Chairman, North Block,
Secretariat, New Delhi.

2. The Principal Chief Commissioner,
Income Tax Department,
Tamil Nadu & Puducherry,
121, M.G.Road, Nungambakkam,
Chennai - 600 034.

3. The Income-Tax Officer,
Non-Corporate Ward 7(1),
6th Floor, Wanaparthy Block,
121, M.G.Road, Chennai - 600034. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the respondent relating to the impugned order Vide DIN & Notice No.ITBA/AST/F/148A/2021-22/1041900033(1) dated 29.03.2022 issued by the 3rd respondent under the provisions of Section 148A(d) of Income Tax Act, 1961 and quash the same.

For Petitioner : Mr.H.Mohammed Farook

For Respondent : Mrs.Hema Muralikrishnan
Senior Standing Counsel

ORDER

The prayer sought for herein is for issuance of Writ of Certiorari to quash the impugned proceedings in DIN & Notice No.ITBA/AST/F/148A/2021-22/1041900033(1) dated 29.03.2022 issued by the third respondent under the provisions of Section 148A(d) of Income Tax Act, 1961 [hereinafter "the said Act"]

2. It is relates to the Assessment Year 2015-16. The petitioner is an assessee under the respondents.

3. The learned counsel for the petitioner submitted that, the Revenue has found that there was an “escaped assessment” for the Assessment Year 2015-2016 and therefore, in order to re-open the assessment under Section 147 of the said Act, the Revenue issued notice dated 21.03.2022 under Section 148A(b) of the said Act and in response to the said notice, the petitioner has to file her reply within a period of 7 days. However, the petitioner has filed her partial reply and requested the third respondent to grant 30 days more time for giving a detailed reply with all supporting documents. However, the said opportunity was not given. Hence, the petitioner has filed this Writ Petition with the aforesaid prayer.

4. The learned Senior Standing Counsel appearing for the respondents submitted that, the reply given by the petitioner was considered by the third respondent and the third respondent issued an order on 29.03.2022 stating that the assessee's preliminary explanation along with voluminous documents attached in support of her claim, were perused. Further, the assessee has also requested for further time of 30 days to collate documents in support of her claim. In this regard, it is seen that the assessee has not denied the issue of cash deposits and proper appreciation of the facts, which can be done only by way of conducting scrutiny. The request of further time was not taken into account by the third respondent by the said order dated 29.03.2022 on the ground that an opportunity of being heard will be provided following the principles of natural justice to substantiate the petitioner's averments before finalization of assessment. Hence, she seeks dismissal of this Writ Petition.

5. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

6. First of all, Section 148A(b) of the said Act provides that, the Assessing Authority has to provide an opportunity of being heard to the assessee, with the prior approval of specified authority, by serving upon him a notice to show cause within such time, as may be specified in the notice, being not less than seven days and not exceeding 30 days from the date on which the said notice is issued, or such time, as may be extended by him on the basis of an application in this behalf, as to why a notice under Section 148 of the said Act should not be issued on the basis of the information which suggests that income chargeable to tax has “escaped assessment” in his case for the relevant assessment year and results of enquiry conducted, if any, as per Clause (a). Therefore, further time of

30 days as sought for by the petitioner, has to be entertained at the time of considering the final assessment proceedings.

7. In view of the above provisions of law, this Court is inclined to allow this writ petition. Accordingly this Writ Petition is allowed with the following directions:

- The impugned order is set aside. However the petitioner is directed to send a reply within three (3) days from the date of receipt of a copy of this order.
- If such reply is received, the third respondent is directed to pass appropriate orders within a period of one week thereafter.
- No costs. Consequently, Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

mp/anu

To

1. The Chairman,
The Central Board of Direct Taxes,
North Block, Secretariat, New Delhi.

2. The Principal Chief Commissioner,
Income Tax Department,
Tamil Nadu & Puducherry,
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6th Floor, Wanaparthy Block,
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+1cc to Mr.H.Mohammed Farook, Advocate, S.R.No.29925

+1cc to M/s.Hema Murali Krishnan, Advocate, S.R.No.29939

MG(CO)
SU(25/05/2022)