IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2022

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.NO.10708 OF 2022
AND
W.M.P.NOS.10346 & 10347 OF 2022

Srikanth B

... Petitioner

Vs

Income Tax Officer
Non Corporate Ward 19(1) Che
Income Tax Department
No.607, 6th Floor, Aayakar Bhawan
Annexe Building, No.121,
MG Road, Nungambakkam,
Chennai – 600 034.

... Respondent

Prayer :

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the records of the Assessment Order dated 31.03.2022 and bearing DIN No.ITBA/AST/S/ 147/2021-22/1042291030(1) for the AY 2017-18 for PAN No.ACOPV6918L passed by the respondent and to quash the same, and to also consequentially set aside the penalty and demand Notices dated 31.03.2022 bearing DIN & Notice Nos: ITBA/PNL/S/271AAC(1)/2021-22/1042291364(1),ITBA/PNL/S/271F/2021-22/1042293938(1) and ITBA/AST/S/156/2021-22/1042291120(1) issued under Section 271AAC(1), Section 274 read with Section 271F and Section 156 respectively of the Income Tax Act, 1961.

For Petitioner : Mr.Karthik Sundaram

For Respondents : Mr.D.Prabhu Mukunth Arun Kumar
Junior Standing Counsel

ORDER

The prayer sought for herein is for a writ of certiorari to call for the records of the Assessment Order dated 31.03.2022 and bearing DIN No.ITBA/AST/S/ 147/2021-22/1042291030(1) for the

AY 2017-18 for PAN No.ACOPV6918L passed by the respondent and to quash the same, and to also consequentially set aside the penalty and demand Notices dated 31.03.2022 bearing DIN & Notice Nos: ITBA/PNL/S/ 271AAC(1)/ 2021-22/1042291364(1), ITBA/PNL/S/271F/ 2021-22/1042293938(1) and ITBA/AST/S/156/2021-22/1042291120(1) issued under Section 271AAC(1), Section 274 read with Section 271F and Section 156 respectively of the Income Tax Act, 1961.

2. Against the assessment order dated 31.03.022 for the assessment year 2017-18 under Section 147 read with Section 144 of the Income Tax Act, 1961 (in short 'the Act'), the present writ petition has been filed.

3. The present petitioner viz., Srikanth claimed to be the nephew of one Venkatadri who was the assessee before the respondent Department. Against the said Venkatadri, the 147 proceedings was initiated by issuing a notice under Section 148 on 29.03.2021. However, prior to the said notice was issued under Section 148, the said Venkatadri died on 23.05.2018. The wife of the said Venkatadri one Champakam became the sole legal heir of Venkatadri as their son was pre-deceased person. Thereafter, notice seems to have been issued in the name of the wife of the said Venkatadri. Subsequently the wife of Venkatadri also died on 29.03.2021. Thereafter, the notice has been issued in the name of Venkatadri and also to the petitioner, being the legal heir or legal representative of the deceased Venkatadri, who was the original assessee, under Section 142(1) of the Act, and again Section 148 notice dated 11.03.2022 was issued against the petitioner and each time, when such notices were issued, it was taken by the petitioner that, he was only a nephew of the deceased Venkatadri or the deceased Champakam and therefore, he is not the legal heir or legal representative of the deceased assessee, hence, he is not liable to be proceeded by the Revenue under the provisions of the Income Tax Act.

4. Despite the reply had been given by the petitioner, finally on 16.03.2022, the Revenue proceeded to complete the assessment and passed the impugned assessment order on 21.03.2022, challenging the same, on the ground that, it has been proceeded wrongly against the petitioner who not being the legal heir or legal representative of the deceased assessee, this writ petition has been filed.

5. Heard Mr.Karthik Sundaram, learned counsel appearing for the petitioner who pointed out the aforestated facts and seeks indulgence of this Court against the impugned assessment order on the said ground.

6. However, Mr.D.Prabhu Mukunth Arunkumar, learned Standing

Counsel appearing for the respondent, relying upon Section 159 of the Income Tax Act as well as the definition given to the term "legal representative", by citing Section 2(29) of the Income Tax Act which refers to Section 2(11) of the Civil Procedure Code, would point out that, whoever inherited the estate or intermeddled with the estate of the deceased assessee against such person proceedings can be made by the Revenue under the provisions of the Income Tax Act with regard to the recovery of any tax due payable by the deceased assessee.

7. I have considered the said submissions made by the learned respective counsel. In this context, whether the petitioner has gained anything from the deceased assessee through their Bank accounts to the extent of Rs.70 Lakhs and if so, whether the said amount belongs to the original assessee Venkatadri or somebody's and within the said amount, since the tax due under the impugned order to the extent of Rs.61 Lakhs would be covered or not, are the factual matrix, which can be gone into only by the Appellate Authority and not by this Court.

8. Moreover, there is no violation of principles of natural justice in this case as the petitioner also has been issued with a notice on the aforestated circumstances and after giving such an opportunity to the petitioner, the impugned order of assessment since been passed, it cannot be assailed before this Court on the ground of violation of principles of natural justice or any other valuable ground, under which the extraordinary jurisdiction of this Court can be invoked.

9. In that view of the matter, this Court has no hesitation to hold that this writ petition cannot be entertained for such reasons as it is not maintainable before this Court by relegating the petitioner to go before the Appellate Authority for filing a quantum appeal before the Commissioner (Appeals).

10. Hence, this Writ Petition is dismissed with the aforesaid observation. However, the learned counsel for the petitioner seeks two weeks time to file quantum appeal and the petitioner is permitted to file quantum appeal before the Commissioner (Appeals) within two weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sgl Sub Assistant Registrar

To

1. Additional / Joint/ Deputy/ Assistant
   Commissioner of Income Tax /
   Income Tax Officer,
   National Faceless Assessment Centre, Delhi.

2. The Income Tax Officer,
   Non-Corporate Ward-9(1),
   121, Nungambakkam High Road,
   Chennai.

+1cc to Mr.Karthik Sundaram, Advocate, S.R.No.29308
+1cc to M/s.Hema Muralikrishnan, Advocate, S.R.No.29226

W.P.No.10708 of 2022

SSB(CO)
PM/24/05/2022