IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.11189 of 2022
and W.M.P.Nos.10768 & 10770 of 2022

M/s.Ramasamy Gounder Chinnasamy ...Petitioner

-Vs-

1. The Central Board of Direct Taxes
   Represented by its Chairperson
   Department of Revenue - Ministry of Finance
   Government of India, New Delhi.

2. Income Tax Officer
   Non Corp Ward (4(1) CBE
   No.63, Race Course Road
   Coimbatore - 641 018.

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

...Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the records on the file of the Respondents in PAN No. ACVPC9582G and quash the impugned order in DIN ITBA / AST / S / 147 / 2021-22 / 1041832660(1) dated 28.03.2022 issued under Section 147 r.w.s 144B of the Income Tax Act 1961 for the assessment year 2016-17 as illegal and without jurisdiction.

For Petitioner : Mr.R.Sivaraman

For Respondents : Mr.A.N.R.Jayapratap
Junior Standing Counsel

ORDER

The prayer sought for herein is for a Writ of Certiorari calling for the records on the file of the Respondents in PAN No. ACVPC9582G and quash the impugned order in DIN ITBA / AST / S / 147 / 2021-22 / 1041832660(1) dated 28.03.2022 issued under Section 147 r/w Section 144B of the Income Tax Act 1961 for the assessment year 2016-17 as illegal and without jurisdiction.

2. This relates to assessment year 2016-17. In order to reopen the assessment under Section 147 of the Income Tax Act, 1961 (In short 'the Act'), notice under Section 148 of the Act was issued on 24.03.2021, pursuant to which the petitioner filed the return on 22.04.2021. Thereafter, a notice under Section 143(2) was issued by the Revenue on 01.10.2021, which was replied by the petitioner on 12.10.2021. Subsequently on 15.11.2021, further notice, this time under Section 142(1) of the Act was issued. That was also replied on 22.11.2021. Thereafter, on 18.03.2022 show cause notice was issued, which was also replied by the petitioner on 19.03.2022 and thereafter the impugned order of assessment was passed on 28.03.2022.

3. Assailing the said assessment order, Mr.R.Sivaraman learned counsel for the petitioner would submit that, there are two accounts ie., two assessees, one is in the individual name ie., in the name of the present petitioner and another one is in the name of HUF. The petitioner assessee claims to have been doing the business in the name of a proprietary concern in whose name there is no assessment, but only in the name of the HUF. According to the learned counsel for the petitioner, the relevant issue which was the reason for reopening of assessment under Section 147 according to the Revenue should have been considered only as transactions taken place under the HUF tag and not in the individual capacity. However, despite the said factor has been brought to the notice of the Revenue, they have not considered the same and proceeded to pass the impugned assessment orders.

4. That apart when a Standard Operating Procedure (SOP) was issued by the Department on 19.11.2020, where certain procedure has been indicated with an expectation that, that would be followed by the Department. However, the Revenue has not followed the said SOP in the case of the petitioner and therefore that is a violation. Hence, on this ground the learned counsel for the petitioner seeks the indulgence of this Court against the impugned order.

5.Heard Mr.A.N.R.Jayapratap, learned Junior Standing Counsel appearing for the Revenue, who would submit that the SOP dated 19.11.2020 is only guidelines to the Department ie., officials of the Revenue and it cannot be stated as if that the same are mandatory directions which have been issued by the Department to be followed scrupulously. It is only for the convenience of the Department such a SOP has been issued, he contended.

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

7. As has been noted herein above, right from the issuance of notice under Section 148 till the passing of the impugned order dated 28.03.2022, this Court did not find any procedural violation or irregularity or violation of principles of natural justice. Therefore, this is a case where if at all any factual matrix has to be gone into based on which the petitioner wants to raise any ground against the impugned order, he can very well go before the appellate authority and can file a regular quantum appeal before the CIT (Appeals) as against the impugned order. There is no scope for interfering with the impugned order on the alleged ground of violation of principles of natural justice or want of jurisdiction or violation of any statutory provisions, for which reasons alone the extraordinary jurisdiction under Article 226 of the Constitution of India can be invoked. Since this case does not fall under the said category, it is liable to be rejected.

8. In that view of the matter, this Court is inclined to dispose of this writ petition with the following order.

- That the writ petition is dismissed with a liberty to the petitioner to approach the appellate authority for filing a regular quantum appeal within three weeks from the date of receipt of a copy of this order.
- If such appeal is filed, the same may be entertained and decided on merits by the appellate authority in accordance with law. Till such time, ie., for three weeks there shall be no coercive steps to be taken by the Revenue pursuant to the impugned order for any reason.

9. With the above directions, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

KST

To

1.The Chairperson,
The Central Board of Direct Taxes,
Department of Revenue - Ministry of Finance,
Government of India, New Delhi.

2.The Income Tax Officer,
Non Corp Ward (4(1) CBE,
No.63, Race Course Road,
Coimbatore - 641 018.

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

+1cc to Mr.R.Sivaraman, Advocate SR. No. 31042
+1cc to Mr.A.P.Srinivas, Advocate SR. No. 30301

W.P.No. 11189 of 2022

NR (CO)
PR (26/05/2022)