IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.05.2022

CORAM :

THE HON'BLE MRS.JUSTICE S.ANANTHI

W.P.No.12144 of 2022
and
W.M.P.Nos.11588 & 11590 of 2022

Chittibabu Dinakaran ... Petitioner

Vs.

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

2.The Income Tax Officer,
Non Corporate Ward 8(2),
Room No.502, Annexe Building,
Ayakar Bhavan,
Mahatma Gandhi Road,
Nungambakkam,
Chennai - 600 034. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for a writ of Certiorari, calling for the records of the first respondent relating to the assessment order passed u/s.147 r.w.s.144 read with Section 144B of the Income Tax Act, 1961 dated 28.03.2022 in DIN: ITBA/AST/S/147/2021-22/1041792756 (1) for the assessment year 2016-17 and quash the same.

For Petitioner : Ms.T.Vasudevan

For Respondents: Mr.D.Prabhu Mukunth Arunkumar

ORDER

This writ petition has been filed by the petitioner seeking to issue a Writ of Certiorarified Mandamus, quashing the impugned assessment order passed by the first respondent u/s.147 r/w 144 and 144B of the Income Tax Act, 1961 dated

28.03.2022.

2. The petitioner is engaging in lorry transport business, which was earlier carried by his father Mr.Soora Chittibabu, who passed away on 23.07.2020. A notice under Section 148 of the Income Tax Act for the assessment year 2016-2017 was issued on 27.03.2021 by the second respondent and it was uploaded in the ITBA Portal. Thereafter, the first respondent issued the impugned assessment order under Section 147 r/w Section 144 and 144B of the Income Tax Act dated 28.03.222. According to the petitioner, he had not seen the ITBA portal since the demise of his father and the first respondent completed the assessment ex-parte and raised a huge demand on the petitioner. Between the date of service of notice under Section 148 and the date of passing the impugned assessment order, there had been a show cause notice under Section 144 dated 23.03.2022, which was put in the portal and the accountant of the petitioner had not seen it on time and informed the same to the petitioner belatedly. Therefore, the income determined by the first respondent in the impugned assessment order is arbitrary and does not reflect the actual taxable income of the petitioner and hence, the same is liable to be quashed.

3. The learned counsel appearing for the petitioner submitted that except the impugned order of assessment dated 28.03.2022, which the petitioner noted the same through web portal belatedly, no show cause notice has been served on him. He further submitted that since the notices were posted only in the Web Portal, there was no visible opportunity to the petitioner to respond the same. Therefore, the petitioner may be permitted to treat the said notice as a fresh one, so as to enable him to respond the same, within a reasonable time, as may be fixed by this court, and to face the assessment.

4. The learned Standing Counsel appearing for the respondents submitted that, all the notices including final show cause notice have been issued and hence, it cannot be treated as a case of violation of principles of natural justice and therefore, he seeks for dismissal of the writ petition.

5. Heard the rival submissions and perused the materials on record.

6. According to the petitioner, the show cause notice dated 23.03.2022 was not served on him and that the notices as well as the subsequent impugned assessment order were uploaded only in the web portal, which the petitioner was able to retrieve only belatedly. Therefore, this court is of the view that, if one chance is given to him, certainly, the petitioner/assessee would reply to the show cause notice and face the assessment.

7. Inview of the above said circumstances, the impugned order can be set aside and the matter can be remitted back to the respondents with a direction to the respondents to give one more opportunity to the petitioner to respond to the show cause notice dated 23.03.2022.

8. Accordingly, it is ordered as follows.

i) The impugned assessment order dated 28.03.2022 is set aside and the matter is remitted back to the respondents for reconsideration.

ii) While considering the matter, it is open to the assessee to treat the show cause notice dated 23.03.2022 as the fresh show cause notice, as the same would not be again issued by the Revenue and respond to the same, by giving documents and inputs/reply, within two weeks from the date of receipt of a copy of this order.

iii) On receipt of such reply from the petitioner, it is open to the respondents to consider the same and pass final assessment order thereafter.

iv) In order to enable the aforesaid process, the Revenue is directed to open the portal for the purpose of the assessee to respond and thereafter, if any other notice is to be issued or further opportunity is to be given, that also can be undertaken through the web portal, and for that purpose the web portal in the assessee's case can be kept open.

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

Sd/-
Vacation Officer

//True Copy//

Sub Assistant Registrar

mst

To:

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

2.The Income Tax Officer,
Non Corporate Ward 8(2),
Room No.502, Annexe Building,
Ayakar Bhavan,
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Chennai - 600 034.

+1cc to M/s.Hema Muralikrishnan, Advocate, S.R.No.31161

[30/05/2022]

W.P.No.12144 of 2022

SJ(CO)
SB(16/05/2022)