IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.12.2022

CORAM

THE HON'BLE MR. JUSTICE S.VAIDYANATHAN

AND

THE HON'BLE MR. JUSTICE C. SARAVANAN

W.A. Nos. 2606 & 2607 of 2022

J. Jayaprakash ..Appellant in both the appeals

Vs.

1. The Principal Chief Commissioner of Income Tax,
Income Tax Department,
No.121, Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034.

2. The Director General of Income Tax (Investigation),
Income Tax Department,
New Income Tax Building,
New No.46, Old No.108,
Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034.

3. The Income Tax Officer (Headquarters)-2,
Office of Principal Commissioner of Income Tax -8,
2nd Floor, Tower II, BSNL Building,
No.16, Greams Road, Chennai – 600 006. ..Respondents 1 to 3 in both the appeals.

Brahmanandam Danda ..4th respondent in W.A. No. 2606 of 2022

Jothiremaya Estates,
rep. by its Parner,
Mr.Brahmanandam Danda
S/o.D. Kotaiah, 2/7, Amman Koil Street,
Mehta Nagar, Aminjikarai,
Chennai – 600 029. ..4th respondent in W.A.No. 2607 of 2022

Prayer: Writ Appeals to set aside the order dated 08.08.2022 passed in W.P. Nos. 19280 & 19285 of 2019 respectively.

For Appellant in both appeals :: Mr.P.C. Harikumar and Associates

For Respondents in both appeals :: Mr.A.P. Srinivas, Senior Counsel &S. Premalatha, Junior counsel for R1 to R3

COMMON JUDGMENT

S. VAIDYANATHAN,J.

AND

C. SARAVANAN,J.

The writ petitioner, who is the appellant herein, is aggrieved by the impugned order dated 08.08.2022 passed by the learned Single Judge in W.P. Nos. 19280 &

19285 of 2019.

2. The respective writ petitions were filed by the appellant for the following relief:

> *"To issue a Writ of Mandamus directing the 2nd and 3rd respondents to consider the application of the petitioner dated 04.05.2019 filed under Section 138(1)(b) of the Income Tax Act and dispose the same in accordance with law."*

3. By the impugned order, the learned Single Judge has dismissed the writ petitions filed by the appellant taking note of the subsequent development. During the pendency of the writ petitions, the appellant had filed applications under Section 138(1)(b) of the Income Tax Act, 1961. Since they were not disposed of, the appellant had therefore approached this Court. During the interregnum, the 1st respondent had passed an order dated 13.07.2022. The appellant is now aggrieved by the order passed by the learned Single Judge as a finding has been rendered under the impugned order upholding the reasons given in the order dated 13.7.2022.

4. It is submitted by the learned counsel for the appellant that the appellant should have been given liberty to challenge the order dated 13.07.2022.

5. On the other hand, learned senior counsel for official respondents would submit that the order of the learned Single Judge is well-reasoned and requires no

interference. It is submitted that the authorities have examined the issue and rejected the applications under Section 138(1)(b) of the Income Tax Act, 1961 and therefore, the present writ appeals are liable to be dismissed.

6. We have considered the arguments advanced by the learned counsel on either side.

7. We are of the view that the appellant should have withdrawn the writ petitions with liberty to challenge the order dated 13.07.2022. Instead, the appellant appears to have argued the case on merits and has invited an adverse order from the learned Single Judge. We are of the view that the observations in the impugned order curtail the right of the appellant to challenge the order passed on 13.07.2022. Therefore, we are inclined to allow these writ appeals by setting aside the following observations made by the learned Single Judge in paragraph Nos. 9 and 10 of the impugned order:

> *"9. A copy of the application filed by the petitioner read with order dated 13.07.2022 does not reveal any flaw in the satisfaction exercised by the Officer/Authority/body concerned in passing order.*
>
> *10. Clause (b) of Section 139(1) states that the requisite information as sought for by the applicant may be furnished if the officer were to be 'satisfied' that it is in 'public inerest' to doso. Since the authority in this case has categorically set out its satisfaction to the effect that furnishing of information is not in 'public interest', assigning reasons for the same, stating that the*

material sought for appears only to be for settlement of personal disputes between the parties, I find no flaw in the order and no cause to interfere in the subjective satisfaction of the officer. In my considered view, the requirement of personal hearing prior to disposal of the request for information, as the consideration of the request is based upon the application, seeking information and the satisfaction of the officer. It is only when the application filed is unclear or the authority requires further information that the question of calling upon the applicant will arise and the Mandamus as sought for is not liable to be issued."

8. Accordingly, the writ appeals are allowed by giving liberty to the appellant to challenge the order dated 13.07.2022 in the manner known to law within a period of 30 days from the date of receipt of a copy of this order. No costs.

(S.V.N.J.) (C.S.N.J.)

nv 02.12.2022

To

1. The Principal Chief Commissioner
of Income Tax,
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2. The Director General of Income Tax
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S. VAIDYANATHAN,J.

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