IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 30.11.2022

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.No.32093 of 2022
and WMP.Nos.31520 and 31522 of 2022

Vedanthachary Parthasarathy Jayanthy ... Petitioner

Vs

1.The Income Tax Officer,
Non-Corporate Ward 22(1), Tambaram
Tambaram Business Range, 1st and 2nd Floor,
Ramakrishna Street, West Tambaram,
Chennai-600 045.

2.National Faceless Assessment Centre, Delhi,
Assessment Unit /Verification Unit/
Technical Unit/Review Unit
Room No.401, 2nd Floor, E-Ramp,
Jawaharlal Nehru Stadium,
Delhi – 110 003. .... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the impugned order u/s.148A(d) dated 29.03.2022 having DIN & Notice No.ITBA/AST/F/148A/2021-22/1041988326(1) in PAN: AESPJ3604H for Assessment Year 2015-16 passed by the 1st respondent and the impugned notice u/s.148 dated 29.03.2022 having DIN & Notice No.ITBA/AST/S/148-1/2021-22/1041990824(1) in PAN: AESPJ3604H for Assessment Year 2015-16 issued by the 1st respondent in furtherance to the order u/s.148A(d), and quash the same as illegal and void-ab-initio.

For Petitioner : Mr.Anandh S.
For Respondents : Mrs.Hema Muralikrishnan
Senior Standing Counsel

ORDER

Mrs.Hema Muralikrishnan, learned Senior Standing Counsel accepts notice for the respondents and is armed with instructions to enable final disposal of this matter. Hence, with consent of both the learned counsel, this writ petition is disposed finally, even at the stage of admission.

2.The challenge in this writ petition is to an order dated 29.03.2022 passed under Section 148A(d) of the Income Tax Act, 1961 (in short 'Act') and the short point argued by the learned counsel for the petitioner is that the order has come to be passed without considering the request for adjournment that has been filed by the petitioner on 28.03.2022.

3. The show cause notice issued under Section 148A(b) is dated 20.03.2022 and calls for response of the assessee, to be filed on or before 28.03.2022. On 28.03.2022, the petitioner has asked for 15 days to respond to the same on the ground that he needs to collate the required data.

4. This request has not been adverted to by the officer. It is incumbent upon the authority to have either accepted the same, in which case, time sought

ought to have been granted, or to put the petitioner to notice that the officer is rejecting the request. Neither of this has been done and the impugned order has come to be passed unilaterally on 29.03.2022 itself. On this one ground, the impugned order stands vitiated.

5.That apart, it is also the attempt of the petitioner to challenge the assumption of jurisdiction by the authorities on the ground that the pre-condition under Section 149(1)(b) has not been satisfied in this case. This is a question of fact that the petitioner will have to establish before the authorities and thus the Court says nothing further on this score.

6.Suffice it to say that, in view of the violation of principles of natural justice, order dated 29.03.2022 is set aside. The petitioner is granted two (2) weeks from date of receipt of a copy of this order to file its reply, for which purpose, the portal shall be enabled.

7. On receipt of reply from the petitioner, the time frame set out under Section 148A(d) will stand triggered and the officer will decide on the basis of the materials available on record including the reply of the assessee, whether or not it is a fit case to issue notice under Section 148 by passing a speaking order with the previous approval of the specified authority.

8.It is made clear that if no response is filed by the petitioner within a time stipulated above, for which the liberty has been granted under this order,

Dr.ANITA SUMANTH, J.

the impugned order will stand revived unilaterally and all consequences will flow from the same.

9.This writ petition stands disposed as above. No costs. Consequently, connected miscellaneous petitions are closed.

kbs **30.11.2022**

Index : Yes
Speaking/Non-speaking Order

To

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