BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.11.2022

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.(MD)No.2887 of 2020
and
W.M.P.(MD)Nos.2436 to 2438 of 2020

Safiullah Mirzabhanu ... Petitioner

Vs.

1.The Assistant Commissioner of
Income Tax,
Central Wing,
Central Circle 2,
Main Building, Williams Road,
Contonment,
Ttiruchirappalli 620015.

2.Assistant Commissioner of Income Tax,
Circle 3(1),
Main Building, Williams Road,
Cantonment,
Tiruchirappalli 620015 ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari calling for the entire records of the 1st Respondent contained impugned order dated 31.12.2019 bearing No.ITBA/AST/S/143(3)/2019-20/1023552823(1) issued under Section 143(3) of the Income Tax Act, 1961 for PAN:AAGPM1211R for

Assessment Year 2017-18 passed by the 1st Respondent.

For Petitioner :Mr.Arun Karthik Mohan
For Respondents :Mr.N.Dilipkumar
Standing Counsel

ORDER

This writ petition is filed challenging the order of assessment passed by the first respondent dated 31.12.2019 issued under Section 143(3) of the Income Tax Act, 1961, for PAN:AAGPM1211R for the Assessment Year 2017-18.

2.It is submitted that the impugned order of assessment dated 31.12.2019 has been made without providing reasonable opportunity to the petitioner. It is further submitted that the petitioner has filed his returns for the Assessment Year 2017-18 on 28.02.2018. A notice under Section 142(3) was issued by the 2nd Respondent on 10.08.2018 and the petitioner responded to the same and submitted that he may be granted some time as he was not keeping well.

3.The learned Standing counsel appearing for the respondents submitted that the same was accepted and through E-Proceedings on 24.09.2018, one more opportunity was also granted to the petitioner to produce evidence on or before 16.10.2018. Thereafter, vide order No. 4/2018-19 dated 31.10.2018, the assessment was transferred from Cantonment Trichirappalli to the Principal Commissioner of Income Tax, Trichy-2, vide order dated 31.10.2018. It is submitted that thereafter, the impugned order came to be passed on 31.12.2019, which reads as under:

> *"A notice under Section 143(2) dated 10.08.2018 was issued to the assessee. The assessee sought adjournment vide her letter dated 26.09.2018. Subsequently, neither there was any appearance nor any submissions made either through online or offline. In view of the same, this unproved agriculture income claim to the tune of Rs.63,54,453/- is assessed under Section 69A of I.T.Act, 1961."*

4. It is further submitted by the learned counsel for the petitioner that the petitioner had sought for time, in view of her medical ailments and thereafter, she has not received any communication. On 26.09.2018, in response to the notice under Section 143(2), the petitioner uploaded a communication informing the 2nd Respondent that she was unwell, and that the information sought for by the respondent would be provided in some time. Subsequently, the petitioner received a communication, bearing order No.4/2018-19 dated 31.10.2018 issued by the Principal Commissioner of Income Tax-2, Trichy intimating the petitioner that her case has been transferred from the files of the 2nd Respondent and centralized to Deputy Commissioner of Income Tax, Central Circle 2 Trichy. Thereafter, the petitioner did not receive any notice under Section 142(1) of the Act, or any other communication either from the 2nd Respondent or from the 1st Respondent, either through e-portal, e-mail or through physical mail with respect to AY 2017-18. It is further submitted that the petitioner has not received any further / fresh notice but was issued with the impugned order. The orders were passed without any further intimation / communication and without affording reasonable opportunity to the petitioner.

5. Apart from the above submission of the petitioner that the impugned orders having been made without granting reasonable opportunity, it is relevant to note that the petitioner was ailing which is not disputed seriously and is now in possession of the relevant documents in support of her claim in assessment and seeks one more opportunity to place the documents before the Assessing Officer.

6. In these circumstances, this Court is of the view that one more opportunity shall be granted to the petitioner to furnish the relevant documents. In view of the same, the impugned order dated 31.12.2019 bearing No.ITBA/AST/S/143(3)/2019-20/1023552823(1) issued by the 1st Respondent is set aside. Consequently, the petitioner shall submit his objections along with documents in support thereof to the 1st Respondent, within a period of four weeks from the date of receipt of a copy of this order. Thereafter, orders shall be passed by the appropriate respondent in accordance with law, after granting a reasonable opportunity to the petitioner. If the petitioner does not submit his objections / produce documents if any within a period of four weeks from the date of receipt of a

copy of this order, the impugned order will stand restored.

7. Accordingly, this writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

18.11.2022

Index : Yes / No
Speaking Order : Yes / No
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To

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MOHAMMED SHAFFIQ, J.,

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