BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 20.06.2022
CORAM

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

Writ Petition (MD) No.6287 of 2022
and
W.M.P.(MD)Nos.4906, 4907 & 8470 of 2022

R.Rajasekaran .. Petitioner

Versus

1.The Additional Commissioner of Income Tax,
Income Tax Department,
National E-Assessment Center,
Delhi.

2.The Joint Commissioner of Income Tax,
Range-2, Income Tax Department,
Trichy,
Tamil Nadu.

3.The Assessment Officer,
Ward-1, Income Tax Department,
Annavasal Road, Thirukokaranam,
Pudukkottai,
Tamil Nadu – 622 002. .. Respondents

Prayer :- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records on the file of the first respondent, vide Pan No.AGQPR6044K-ITBA/AST/S/147/2021-22/1041156861(1), dated 21.03.2022, quash the same as illegal and devoid of merits and direct the first respondent to redo the assessment for the year 2016-17 after providing reasonable opportunities to the petitioner, by following the due process of law.

For Petitioner : Mr.Raja.Karthikeyan

For Respondents : Mr.N.Dilipkumar
Senior Standing Counsel

ORDER

The petitioner aggrieved against the assessment order passed under Section 147 read with Section 144 read with Section 144-B of the Income Tax Act [hereinafter referred to as ''the Act''], following the best judgment assessment, had filed this Writ Petition.

2.The contention of the petitioner is that he earlier filed his return on 10.03.2017 for the assessment year 2016-2017. The return of the petitioner/assessee was selected for limited scrutiny and an order under Section 143(3) of the Act was passed on 29.10.2018, accepting the income tax return by the petitioner. Thereafter, on 25.03.2021 a notice under Section 148 of the Act was issued and the same was served on the petitioner on the same day by E-mail. Though the petitioner has filed return of income in response to the notice under Section 148 of the Act, the same was not E-verified within the due date. Hence, another notice under Section 142(1) of the Act was issued by the third respondent on 26.10.2021, directing the petitioner to furnish the information called for as per Annexure and on the points specified therein on or before 10.11.2021 at 11.00 a.m. Thereafter, the first respondent issued a notice dated 26.11.2021 under Section 142(1) of the Act. Since the assessment has been done in faceless manner, the petitioner immediately sent a reply through the Web portal. Due to technical glitch, it cannot be uploaded. Thereafter, again on 16.12.2021, a notice under Section 142(1) of the Act, followed by another notices dated 28.12.2021 and 30.12.2021, was issued.

3.Thereafter, the petitioner attempted to send his reply through E-mail on 01.01.2022, which cannot be done due to some technical defects. Therefore, the petitioner had sent a reply by speed post on the same day to the first respondent. Without considering the petitioner's reply, on 04.01.2022 the third respondent directed him to furnish his response through E-filing portal. Thereafter, the petitioner was served with the show cause notice, dated 16.03.2022, making certain claims. The petitioner immediately sent reply on 17.03.2022. However, the respondents failed to consider the same for the reason that it has been received at the fag end of the Assessment Year and hence, following the best judgment assessment under Section 144 of the Act, the impugned order dated 21.03.2022, has been passed, which is impugned in the present Writ Petition.

4.The learned counsel for the petitioner submits that from the above narration, the Income Tax Department in a hasty manner, without giving proper notice and considering the petitioner's reply and the difficulty faced by him in uploading the documents in the Web Portal, in violation of principal of natural justice, has passed the impugned order and hence, the same has to be set aside.

5.The third respondent filed counter affidavit. The learned Senior Standing Counsel appearing for the respondents submits that the petitioner had filed his return of income for the assessment year 2016-2017 on 10.03.2017, admitting total income of Rs.9,98,920/-. The case of the petitioner/assessee was selected for limited scrutiny under Computer Assisted Scrutiny Selection [CASS] to verify source for the cash deposits made in his bank accounts.

The scrutiny assessment under Section 143(3) of the Act was completed on 29.10.2018, by accepting the income returned by the petitioner. Thereafter, it was noticed that the petitioner had purchased an immovable property on 04.07.2014 at Chennai, which consists of land and building, for a sale consideration of Rs.6,50,00,000/-, excluding registration charges and stamp duty etc. As per Annexure 1-A of the sale deed, the value of the land is Rs.4,00,00,000/- and the building has been valued at Rs.2,50,00,000/-. Further, the petitioner had sold the property on 29.03.2016, for a sale consideration of Rs.6,85,00,000/-. On verification of the sale deed, it was found that the value of the land is mentioned as Rs.6,25,00,000/- and the building has been valued at Rs.60,00,000/-. The value of the building was also certified by the Assistant Engineer (Building Inspection) as Rs.60,00,000/-. It is pertinent to note that the time gap between the purchase and sale of the above said property was one year and nine months only, whereas, the value of the building was reportedly reduced by Rs.1.90 Crores *i.e.*, 73.07%. Though the value of the building was reportedly reduced by 73% within less than 2 years of time, no justification for the same was given. Accordingly, the case of the petitioner was re-opened under Section 147 of the Act and thereafter, a notice was issued under Section 148 of the Act. As per the existing guidelines, after issuance of notice under Section 148 of the Act, the Jurisdictional Assessing Officer is required to issue notice under Section 143(2) of the Act or notice under Section 142(1) of the Act, as the case may be. In this case, though the petitioner has filed return of income in response to the notice under Section 148 of the Act, the same could not be E-verified within the due date. Since no valid return of income was available, notice under Section 143(2) of the Act was not issued. Notice under Section 142(1) of the Act was issued on 26.10.2021 and thereafter, the case was transferred to the National Faceless Assessment Centre (NaFAC) for completion of re-opened scrutiny assessment in faceless manner. On 23.11.2021, S.P.Ulagappan, Chartered Accountant, sent a WhatsApp Message to the Jurisdictional Assessing Officer, which reads as follows:-

> *''For Rajendran Rajasekaran, after writing the response to the notice, when continue is clicked, it is not being continued. Even grievance submission is not working (15-16 Assessment and 16-17 Assessment) PAN.AGQPR6044K. Repeated attempts made.''*

The new E-filing portal of the Income Tax Department was launched on 7th June 2021 and during initial period, some technical glitches reported. Accordingly, the query was replied as under:

> *''There may be some technical issues. Please wait for few days and then try again. In case the issue continues, you may lodge a complaint by email.''*

6.The learned Senior Standing Counsel further submits that the petitioner vide his E-mail, dated 01.01.2022, informed to the Jurisdictional Assessing Officer that he was unable to respond through I.T. Portal. The petitioner without furnishing any evidence to the Jurisdictional Assessing Officer, stated that he has raised grievance in the portal to DIT (System) on 17.12.2021 and the same was not resolved. The petitioner uploaded the documents as attachments to the E-mail sent to the Jurisdictional Assessing Officer stating that the same may be treated as response to the notice. Since the assessment was pending before the National Faceless Assessment Centre, the E-mail sent to the Jurisdictional Assessing Officer cannot be treated as response to the notices.

7.The learned Senior Standing Counsel also submits that a show cause notice dated 16.03.2022, was issued to the petitioner giving one more opportunity for furnishing his explanation along with documentary evidence. The petitioner requested 10 days' time on 17.03.2022 for furnishing details. However, the said request was not considered as the assessment was getting barred by limitation of time on 31.03.2022. The Faceless Assessing Officer had considered the claim of the petitioner that the value of the building was reduced because of Chennai flood in 2015. Hence, the claim of the petitioner was not accepted as the same was not supported with any documentary evidences.

8.Considering the above said rival submissions and on perusal of the materials, it is seen that the petitioner had attempted to send a reply through the Web Portal, which could not be transmitted due to some technical glitches. Thereafter, the petitioner had sent his explanation, which was not accepted and therefore, the petitioner was served with notice, for which, he had sent a reply on 17.03.2022, seeking 10 days' time to furnish further submissions and documents. The reason given by the Assessing Officer that the assessment was getting barred by limitation of time and further time cannot be given, is unjustifiable and improper. Hence, this Court finds that the action on the part of the authorities in refusing to give time to the petitioner for submitting further documents, is improper. In view of the same, this Court is inclined to set aside the impugned order of the first respondent, dated 21.03.2022. Accordingly, it is set aside. The petitioner is directed to submit his reply along with supporting documents, within a period of two weeks from the date of receipt of a copy of this order. Thereafter, the respondents shall pass appropriate orders by following the procedures as contemplated under the Act, on merits and in accordance with law.

9.This Writ Petition is disposed of accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(T & P)

// True Copy //

/07/2022

Sub Assistant Registrar(CS)

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To

1.The Additional Commissioner of Income Tax,
Income Tax Department,
National E-Assessment Center,
Delhi.

2.The Joint Commissioner of Income Tax,
Range-2, Income Tax Department,
Trichy,
Tamil Nadu.

3.The Assessment Officer,
Ward-1, Income Tax Department,
Annavasal Road, Thirukokaranam,
Pudukkottai,
Tamil Nadu – 622 002.

+1 CC to M/s.RAJA. KARTHIKEYAN, Advocate (SR-27374[F] dated 22/06/2022)

+1 CC to M/s.N. DILIPKUMAR, Advocate (SR-27508[F] dated 22/06/2022)

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KMV(CO)
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