



W.P(MD).No.11051 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.08.2022

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

W.P(MD).No.11051 of 2022

and

W.M.P(MD)Nos.7939 and 7940 of 2022

Gomathy International
Represented by its Partner,
Mr.V.S.Velayutham

... Petitioner

Vs.

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

2.The Assistant Commissioner of Income Tax
Circle 1, Tirunelveli
Nellai City Centre, Tiruchendur Road,
Ramnath Nagar,
Tirunelveli, Tamilnadu-67011.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records on the file of the first respondent and quash the impugned order in PAN:AABFG3045J, dated 30.03.2022 in DIN:ITBA/ AST/ 147/ 2021-2022/ 1042064473 (1) passed by the first respondent under Section 147 read with Section 144 and 144 B of the Income Tax Act, 1961 for the assessment year 2017-2018.



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For Petitioner : Mr.N.V.Balaji
For Respondents : Mr.N.Dilip Kumar
Standing Counsel

ORDER

The petitioner filed this writ petition to quash the impugned order in PAN:AABFG3045J, dated 30.03.2022 in DIN: ITBA/AST/S/147/2021-22/1042064473(1) passed by the first respondent under Section 147 r.w.s.144 & 144B of the Income Tax Act, 1961 (hereinafter referred to as the “Act” for brevity) for the assessment year 2017-18.

2.The primary contention of the petitioner is that the petitioner's partnership firm was assessed with tax for the assessment year 2017-18 and the order was passed by the first respondent in PAN:AABFG3045 dated 30.03.2022 arriving at the assessable income at Rs.4,79,66,987/-. Thereafter, a notice under Section 148 of the Act, was said to have been issued to the petitioner to the secondary mail id and the petitioner has not received any such mail. Further, another notice, dated 11.11.2021 under Section 142(1) of the Act, was said to have been sent to the secondary mail, shell.madurai@gmail.com, which was also not received by the petitioner. Again a notice, dated 31.01.2022 was said to have been served to an email id, abc@gamil.com and the same was also not received by the petitioner. On



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23.03.2022, a show cause notice was issued on the petitioner. Finally, a physical notice, dated 31.01.2022 was said to have been served on the petitioner. Thereafter, due to the arbitration dispute, the petitioner was not able to file all the documents before the first respondent. Hence, the account details could not be submitted. In the meanwhile, the petitioner has sent reply on 25.03.2022 seeking four weeks time to submit the necessary documents. Thereafter, without considering the request of the petitioner, the first respondent completed the assessment and passed the assessment order and final notice was sent, just seven days prior to passing of the assessment order.

3. According to the petitioner, notices were not served on the petitioner, though the department claims that it has been uploaded in the portal and that is sufficient. The petitioner had furnished his mobile number and the mail of the petitioner, namely shell.madurai@yahoo.co.in. The show cause notice and the final notice were issued at the belated stage. Earlier, notices under Sections 147, 148 of the Act were not issued to the petitioner. If the petitioner has put on notice, earlier he has filed the returns to the Department. Hence, the fundamental requirements ie., issuance of notice has not been done in the petitioner's case and without providing sufficient time, a show cause notice was served on 23.03.2022 and an assessment order was also passed. According to the petitioner, the first notice was issued on 30.03.2021 and as



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per Section 153 of the Act, the assessment has to be completed within one year.

4.The learned Standing Counsel appearing for the respondents submitted that as per Sections 282 and 127(b) of the Act, the procedure has been stipulated for communication of the notice sent by the department to the assessee. The petitioner had given his address and email id particulars. The notice has been sent by the officer of the department. The petitioner, having received notice can be quite and not participated in the proceedings. Finally, the petitioner had sent a communication seeking four weeks time for filing returns, which is not permissible. Since the first notice under Section 148 of Act was issued on 30.03.2021, as per Section 153 of the Act, the assessment has to be completed within one year, ie., on or before 30.03.2022. Apart from that, the petitioner was served with the notice under Section 142(1) of the Act, on 11.11.2021. With regard to the petitioner's submission, the same has to be verified with the departmental proceedings.

5. The learned Standing Counsel for the respondents filed a memo and referred to the following passages:

“3.It is submitted that the petitioner's main grievance is that the notice and other communications were served to the email id shell.madurai@g.mail.com, which is a secondary email of the



petitioner in its e-filing portal and the notices were served not upon the petitioner through his registered mail id gomathyinternational@gmail.com, which is updated in the e-filing portal. The assessment order is passed without service of notice and hence there is violation of principles of natural justice is its grievance.

4.It is submitted that the petitioner's case was selected for the assessment year 2017-2018 under NMS category. The notice under Section 148 for the assessment year 2017-2018 was served to the email id: shell.madurai@yahoo.co.in. Since the assessee has not filed return of income for the particular year the question of e-mail id quoted in the return of income for the assessment year 2017-2018 does not arise.

5.It is submitted that the petitioner has quoted its registered e-mail id as shell.madurai@yahoo.co.in in the earlier assessment year 2014-2015, 2015-2016 and 2016-2017.

6.It is submitted that the notices were issued in the above mentioned e-mail id only ie., shell.madurai@yahoo.co.in. The income returns filed by the petitioner for the previous years are filed separately as type set. The proof of delivery of 148 notice in the above said mail-id is also attached.”

6. Considering the submission and on perusal of the materials, it is seen that there is dispute between the partners, which cannot be a shield, estopping the Income Tax Department to proceed against the violation and non-filing returns of the partnership firm and conclude the same. The reason given by the petitioner is that, since there was dispute among partners, petitioner denied accessibility to the company's records, appears reasonable. Now, the petitioner made arrangements, collected documents and gives an undertaking



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to file an appeal against the impugned order. Due to the peculiar facts and circumstances of the case and by petitioner approaching this Court within stipulated period, appeal could not be filed. Further, the petitioner's apprehension is that his appeal will not be entertained on the point of limitation. The petitioner would be denied the right of statutory appeal. The petitioner's apprehension is reasonable. Hence, the delay if any is hereby condoned.

7. In view of the same, this Court directs the petitioner to file an appeal before the concerned authority within a period of four weeks from the date of receipt of copy of this order. The respondents are directed not to take any further action pursuant to the impugned order till then. This protection would be for a period of four weeks from the date of receipt of copy of this order. In the event of petitioner failure to file an appeal, the Department is free to proceed thereafter without giving any further notice to the petitioner.

8. With the above direction, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes / No



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Internet : Yes/ No
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Note: Issue order copy on 18.08.2022

To

- 1.The Additional/Joint/Deputy/Assistant
Commissioner of Income Tax/
Income Tax Officer,
National Faceless Assessment Centre, Delhi.
- 2.The Assistant Commissioner of Income Tax
Circle 1, Tirunelveli
Nellai City Centre, Tiruchendur Road,
Ramnath Nagar,
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M.NIRMAL KUMAR, J.

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