IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.09.2023

CORAM

THE HON'BLE **MR.JUSTICE C.SARAVANAN**

W.P.Nos.1663, 9436, 25775 & 25778 of 2022
and W.M.P.Nos.1809, 1811, 9187, 9192,
24837, 24838, 24842 & 24844 of 2022

Syed Nizamuddin .. Petitioner in all W.Ps.

Vs.

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

2.The Assistant Commissioner of Income Tax,
Non-Corp Circle 7(1), Chennai,
608, Wnaparthy Block, VI Floor,
Chennai-Wanaparthy Block,
No.121, MG Road, Nungambakkam,
Chennai 600 034. ... Respondents in all W.Ps.

Prayer in W.P.No.1663 of 2022: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorari calling for the records of the first respondent contained in its Notice dated 24.03.2021, issued under Section 148 of the Income Tax Act, vide ITBA/AST/S/148/2020-21/1031733850(1) and all notices and proceedings in furtherance thereof, for PAN: AAFPN6192F, for assessment year (AY) 2013-14 and t quash the same.

Prayer in W.P.No.9436 of 2022: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorari calling for the records of the respondent No.1 contained in its order dated 30.03.2022, issued under Section 147 read with Section 144B of the Income Tax Act, vide ITBA/AST/S/147/2021-22/1042158102(1) for Assessment Year 2013-14 for PAN : AAFPN6192F for Assessment year (AY) 2013-14 and to quash the same.

Prayer in W.P.No.25775 of 2022: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorari calling for the records of the respondent No.1 contained its impugned Notice for penalty dated 30.03.2022 issued under Section 274 read with Section 271(1)(c) of the Income Tax Act bearing ITBA/PNL/S/271(1)(c)/2021-22/1042158266(1) for PAN: AAFPN6192F, for assessment year (AY) 2013-14 and all proceedings in furtherance thereof, including Notice bearing DIN : ITBA/PNL/F/271(1)(c)/2022-23/1044230686(1), dated 28.07.2022 and Notice bearing DIN and Notice No.ITBA/PNL/S/271(1)(c)/2022-23/1044574539(1) dated 10.08.2022 issued by the Respondent No.2 and to quash the same.

Prayer in W.P.No.25778 of 2022: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorari calling for the records of the respondent No.1 contained its impugned Notice for penalty dated 30.03.2022 issued under Section 274 read with Section 271F of the Income Tax Act bearing ITBA/PNL/S/271F/2021-22/1042158271(1) for PAN: AAFPN6192F, for assessment year (AY) 2013-14 and all proceedings in furtherance thereof, including Notice bearing ITBA/PNL/F/271F//2022-23/1044574117(1), dated 10.08.2022 issued by the Respondent No.2 and to quash the same.

In all Writ Petitions

For Petitioner : Mr.Suhrith Parthasarathy

For Respondent : Mrs.Vasanthan
Additional Govt.Pleader.

COMMON ORDER

The petitioner is aggrieved by the impugned assessment order dated 24.03.2021 under Section 148 of the Income Tax Act, 1961 in W.P.No.9436 of 2022.

2. In W.P.No.1663 of 2022, the petitioner has challenged the impugned notice dated 24.03.2021 under Section 148 of th Income Tax Act, 1961 for the Assessment Order 2013-2014.

3. In W.P.No.9436 of 2022, the petitioner has challenged the impugned assessment order dated 24.03.2021.

4. In W.P.Nos.25775 & 25778 of 2022, the petitioner has challenged the impugned Assessment order and penalty notices both dated 30.03.2022 passed under Section 147(c) and issued under Section 274 r/w 271(1)(c) and under Section 274 r/w 271(f) of the Income Tax Act, 1961 respectively.

5. The facts of the cases are that the petitioner has opted to settle the dispute under the Income Disclosure Scheme for the assessment year 2009-10 & 2013-14 respectively. The application filed was accepted and Form-4 issued under Section 183 of the Finance Act, 2016 by the first respondent on 29.11.2017 under the provisions of the Income Declaration Scheme, 2016. The petitioner's application was also accepted. The petitioner has also paid

tax under the Income Disclosure.

6. After the case was accepted under the aforesaid scheme, the first respondent invoked under Section 148 of the Income Tax Act, 1961 and issued notice dated 24.03.2021 for the assessment year 2013-14 alone. The said notice issued under Section 148 is impugned in W.P.No.1663 of 2022.

7. The second respondent had issued notice under Section 142(1) of the Income Tax Act, 1961 on 13.11.2021 and 29.12.2021 to the petitioner. The petitioner has submitted a response to the notice under Section 142(1) of the Income Tax Act, 1961 and 03.03.2022. This was also followed by a show cause notice dated 27.03.2022.

8. Specific case of the petitioner is that the first respondent has not furnished the details of alleged receipt of a sum of Rs.15,50,000/- which is said to have been deposited into the petitioner's account. It is submitted that penalty notices dated 30.03.2022 impugned in W.P.Nos.25775 merely reproduces the content of show cause notice dated 27.03.2022 and reply of the petitioner and it has been wrongly concluded as follows:-

"8. Lastly, as per procedure laid down under the provisions of face-less assessment under Section 144B, the draft assessment order as above was duly confronted with the assessee vide show cause notice under Section 143(3) dated 27.03.2022 to file its explanation against the proposed additions. In this respect, the assessee vide its written submission dated 29th March, 2022 against the addition made on account of commission income has stated that:

" You have also stated that we have attached Challans for payment of Tax under IDS-2016 only for the Assessment Yea 207-18 and no for the relevant Assessment Year. In this connection it is submitted that all the taxes due under the IDS, 2016 are remitted under Challan 286 under the Minor Head 111. The Scheme provides remittance of Tax only through this Challan and the Assessment year by default in the Challan will be only Assessment Year 2017-18 and it is not possible or required to remit tax payments assessment year wise using the Challan prescribed".

In support of his contention, the assessee has filed screen shot of e-payment. It has been further stated that:

> As is evident above by default the Assessment Year is displayed as Assessment Year 2017-18 and as per the header of the Challan the taxes paid under the IDS-2016 under this challan may belong to the income of any previous financial year.
>
> You have concluded that under the circumstances the payment of Tax and issuance of Form 5 under IDS-2016 for Assessment Year.
>
> I submit that your conclusion is based on incorrect appreciation of the provisions of the IDS-2016 which provides only for issuance of Form 4 and not Form 5 as stated by you and

also does not provide for year wise payment of Taxes and issuance of separate Form 4 Assessment Year wise".

9. Considering the above submission put forth by the assessee regarding issue of Form No.4 and 5 and challans for payment of taxes under IDS-2016, the addition made as commission income is modified and the income is re-assed. However, regarding addition on account of cash deposited in the bank account, the assessee has not submitted any documentary evidence and the source of cash deposited in the bank account still remains the same and it has not been disclosed under the IDS-2016. Therefore, the addition made on this account is restored. Accordingly, taxable income is recomputed as under:-

Return was not filed either u/s 148 or u/s149	Nil
Addition u/s.69 Unexplained investment, as stated above.	15,50,000 /-
Total	15,50,000/-

9. The learned Senior Standing Counsel for the respondents would submit that there was a material suppression of fact by the petitioner for the Assessment year 2013-14 and therefore Notice dated 24.03.2021 was issued .

10. Post facto, the petitioner has also applied under the RTI Act, wherein the request of the petitioner regarding the account number which was referred to notices under Section 142(1) has been furnished.

11. It is the specific case of the petitioner that there was no deposit of a sum of Rs.15,50,000/- into the petitioner's account. Therefore, the impugned order dated 30.03.2022 passed under Section 147 read with Section 144B of the Income Tax Act, 1961 is liable to be quashed.

12. That apart, it is submitted that the assessment year 2013-14, the petitioner has merely declared a sum of Rs.40,00,000/- whereas the income which has escaped assessment is Rs.15,50,000/- + Rs.80,22,222 and in all, amounting to Rs.95,72,222/-.

13. It is further submitted that the assessment order has wrongly dropped the proposal of tax for a sum of Rs.80,20,222/- .

14. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents.

15. A reading of the assessment order dated 30.03.2022 partly dropping the proposal and partly upholding the proposal of the show cause notice dated 27.03.2022 is a non-speaking order. The problem has arisen on account of the assessment though National Face-less Centre under Section 144B of the Income Tax Act, 1961. The order has been passed in a hurry so that the proceeding does not lapse.

16. That apart, the second respondent has passed the assessment order without furnishing the requisite information regarding the account number, in which the petitioner has now obtained under the RTI Act, on 11.11.2022.

17. Considering the above, the impugned order dated 30.03.2022 impugned in W.P.No.9436 of 2022 is quashed and the case is remitted back to the first respondent and to pass a fresh *denovo* order on merits of the case, within a period of six months from the date of receipt of a copy of this order. The first respondent shall intimate the date for the personal hearing through Video Conference to the petitioner. The first respondent shall consider all the materials that are available before it and the information obtain by the petitioner and Right to Information Act and pass a fresh order on merits within a period of eight weeks

from the date of receipt of a copy of this order. Accordingly, W.P.Nos.9436 of 2022 stands disposed.

18. Consequently, the impugned order in W.P.Nos.25775 & 25778 of 2022 stands quashed. In view of the above orders, these writ petitions stand disposed of. W.P.No.1663 of 2022 stands closed. No costs. Consequently, connected miscellaneous petitions are closed.

11.09.2023

Index : Yes/No
Neutral Citation : Yes/No
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of Income Tax/Income Tax Officer,
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C.SARAVANAN, J.

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