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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.11.2023

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.2802 of 2023
and
W.M.P.No.2924 of 2023

Alagammal Parasivam Murughan
... Petitioner

Vs.

Assessment Unit,
Income Tax Department,
Ministry of Finance,
New Delhi.
... 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 on the file of the respondent and quash the impugned order in ITBA/AST/S/143(3)/2022-23/1048147686(1) dated 21.12.2022 under Section 143(3) read with Section 144B of the Income Tax Act, 1961 passed by the respondent for the Assessment year 2021-22 as illegal and not in accordance with law.

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For Petitioner : Mr.M.Premkumar

For Respondent : Mr.K.Balakrishnan
Standing counsel

ORDER

This writ petition has been filed challenging the impugned assessment order passed by the respondent.

2. The learned counsel for the petitioner would fairly submit that the petitioner had received the notice issued by the respondent. However, she was unable to upload her reply to the said notice in the web portal of the respondent and with regard to the same, she had raised her grievance vide petition dated 08.10.2022. Thereafter, a notice dated 02.11.2022 was issued to the petitioner by the respondent seeking for additional clarification. However, the petitioner was once again unable to file her reply to the said notice dated 02.11.2022 since the option being disabled on the online portal of the Department.

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3. At this juncture, by virtue of the show cause notice dated 14.11.2023, the respondent had provided an opportunity to the petitioner to file his reply on or before 21.11.2023. However, in spite of his several attempts, the petitioner was not able to submit his reply through the web portal and hence, she raised her grievance and filed the grievance petition along with his reply on 30.11.2023. Thereafter, the respondent has passed the impugned assessment order on 21.12.2023. Hence, the petitioner has filed this writ petition challenging the said assessment order.

4. In reply, the learned counsel for the respondent had vehemently opposed the submissions made by the learned counsel for the petitioner stating that the show cause notice dated 14.11.2022 has been issued to the petitioner and in spite of several notices and opportunities, the petitioner had failed to file her reply to the said show cause notice.

5. Further, the learned counsel for the respondent had pleaded for the dismissal of this writ petition for the reasons stated in his counter

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affidavit, which reads as follows:

> *"8. In reply to the petitioners submissions in Para 8, it is stated that the respondent followed all statutory procedures and processes in arriving at the final assessment of the assessee/ petitioner. The petitioner was given sufficient opportunity to place his side of the case before the AO, but failed to do so. The lack of diligence and care on the part of the assessee cannot be attributed to any shortcoming by the respondent who, as shown by the record, not only followed the statute, but also allowed certain relaxations in time, allowing the assessee to file documents and evidences beyond the prescribed time period (as can be evinced on perusal of the notice U/s 142(1) dated 21.09.2022). There is no need or opportunity for this Hon'ble Court to exercise its power under its writ jurisdiction.*
>
> *9. In response to the petitioners averments in Para 9, it is submitted that according to the documents filed by the petitioner himself, as well as the timeline as stated by him, it is quite evident that the petitioner/ assessee always responded to the notices addressed to him at a belated date after the time mentioned within the notice had already expired. Additionally it shows that the respondent followed all statutory compliances and that the petitioner/ assessee was in due receipt of the notices and orders issued by the respondent.The only ground which the petitioner agitates for issuing a writ in his favour, is that the delay in filing documents, which according to the petitioner himself, he attempted to file after the relevant period had already expired. The same is easily corroborated upon perusal of the dated mentioned in the documents annexed with the petition. There is no necessity or ground for this Hon'ble court to exercise to Writ jurisdiction in this matter. The statutory remedies under the Act are sufficient, and are ex facie*

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applicable to the petitioner in this case, and hence he is liable to first exhaust those remedies first before approaching this Hon'ble Court."

6. Heard the learned counsel for the petitioner and the respondent and also perused the materials available on record.

7. The only issue involved in this writ petition is that the petitioner was not able to upload her reply due to the reason that option being disabled in the web portal of the respondent. Further, she had also produced the documents to show that even before the expiry of time granted by the respondent vide show cause notice dated 14.11.2022, she had tried to upload her reply. It also appears that though the impugned assessment order was passed on 21.12.2022, the petitioner had filed her grievance petition along with her reply on 30.11.2022. However, without considering all these aspects, the impugned order came to be passed by the respondent.

8. In the present case, the respondent is supposed to have considered the reply of the petitioner and if no reply was filed by the petitioner, the respondent is supposed to have called the petitioner for

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personal hearing. However, the respondent had not provided any opportunity to the petitioner for personal hearing.

9. Considering all the above aspects, it is clear that the said impugned assessment order was passed in violation of principles of natural justice, without providing opportunities to the petitioner and hence, this Court is inclined to set aside the same.

10. Accordingly, the impugned assessment order dated 21.11.2022 is set aside. While setting aside, this Court remits the matter back to the concerned Authority, in which case, the respondent is directed to keep the portal open, so as to enable the petitioner to upload her reply. Further, the respondent is directed to pass an appropriate order after affording an opportunity of personal hearing to the petitioner.

11. The petitioner is directed to provide all the documents to the respondent. If she is unable to upload the same in the web portal of the respondent, she is permitted to appear before the concerned Authority

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and file the said documents physically. In such case, the Authority concerned is directed to take the same on record and pass appropriate order in accordance with law, after affording opportunity for personal hearing to the petitioner.

12. With the above directions, this writ petition is disposed of. No costs. Consequently, the connected miscellaneous petition is also closed.

03.11.2023

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
nsa

To

Assistant Commissioner State Tax,
Muthialpet Assessment Circle,
No.32, Elephant Gate Bridge Road,
Integrated Commercial Taxes Building
Chennai North Division, Chennai 600 003.

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KRISHNAN RAMASAMY.J.,

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