IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.10.2023

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THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.5307 of 2022
and
W.M.P.Nos. 5392 and 5393 of 2022

Tadimalla Gowthami ... Petitioner

Vs.

1.The Income Tax Officer,
Non-Corporate Ward 10(6), Chennai
Wanaparthy Block, No.121, Mahatma Gandhi Road,
Nungambakkam, Chennai 600 034

2. National Faceless Assessment Centre, Delhi,
Represented by Additional/Joint/Deputy
Assistant Commissioner of INCome Tax,
Room No.401, 2nd Floor, E-Ramp,
Jawaharlal Nehru Stadium,
Delhi - 110003

... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records on the file of the 2nd respondent pertaining to the order u/s.147 r/w.Section 144 r/w Section 144 B of the Income Tax Act, 1961 dated 24.09.2021 for Assessment year 2016-17, having DIN:ITVA/AST/S/ 147/2021-22/1035861448(1) and quash the same and for a consequential direction to the respondents herein not to take any coercive action against the petitioner in pursuant to an order issued by the 2nd respondent.

For Petitioner : Mr.S.Namasivayam
For Respondent : Mr.S.Premalatha,
Junior Standing counsel
for Mr.R.S.Balaji,
Senior Standing Counsel

ORDER

This writ petition has been filed challenging the assessment order passed by the second respondent in DIN:ITVA/AST/S/147/2021-22/ 1035861448(1) dated 24.09.2021 under section 147 read with Section 144 read with Section 144 B of the Income Tax Act, 1961 (for short, the Act).

2. The case of the petitioner is that she has filed her Income Tax return for the Assessment year 2016 to 2017, wherein she has

provided his representative address and email id, who assisted him for his tax compliances. She further states that her representative died in the month of April 2020 during initial covid wave. The authorities had issued notice under Section 148 and two notices under Section 142(1) dated 08.03.2021 through email, whereby the petitioner was asked to furnish requisite details on or before 12.03.2021 for the sale of immovable properties for income tax assessment. Since the authorities did not receive any reply from the petitioner, the second respondent passed the impugned order dated 24.09.2021, which has been sent to the petitioner through speed post. The petitioner, having received the impugned order, had submitted her reply immediately on 27.09.2021. Admittedly, the authorities had sent re-opening of assessment notices on various occasions i.e on 18.03.2020, 08.03.2021, 17.05.2021, 13.08.2021 and 26.08.2021 to the petitioner's representatives' email id, but she was not aware of the same. Aggrieved by the said impugned order, the present writ petition has been filed before this Court.

3. The learned counsel appearing for the petitioner submitted that

notices were issued on the petitioner's tax consultant, who passed away as early as 09.04.2020. Thus, she was not in a position to respond to the notices and that only after the assessment order was passed, she came to know about the assessment order passed by the second respondent. Immediately, she sent a reply dated 27.09.2021. Taking into consideration, the reply given by the petitioner, on 13.01.2022, the second respondent passed an order under Section 271(1)(b) dropping the penalty proceedings initiated against her, however, confirming the tax demand as made in the assessment order. He further submitted that the rural agricultural land will not fall within the ambit of the term “capital asset” as defined in Section 2(14) of the Act and that therefore, it will not attract any capital gain tax. He also submitted the sale happened only through the Power of Attorney agent and that the petitioner had received a sale consideration of Rs.4.10 Crores, which is evident from the statement of accounts of the petitioner, but unfortunately, the authorities had taken it to be a sum of Rs.11.17 crores and assessed a sum of Rs.6.77 crores towards the capital gains and a demand was raised for a sum of Rs.2.61 Crores . He would further submit that the petitioner was not given an opportunity of personal hearing and hence, prays to quash the impugned order issued by the 2nd respondent.

4. Per contra, the learned Junior Standing Counsel appearing on behalf of the respondents submitted that penalty under Section 271(1)(b) was levied due to the assessee's failure in replying to the notices issued to her on various occasions and further submitted that only after the assessment order was issued, she submitted a reply dated 27.9.2021. Further, on the aspect of the calculation of the capital gain tax on the rural agricultural land, nothing has been mentioned in her reply dated 27.9.2021.

5. This Court has carefully considered the submissions made on either side and also perused the materials available on record.

6. Taking into consideration the facts and circumstances of the case and also considering the submissions made by the learned counsel for the petitioner, this Court feels that the impugned order appears to

have been passed without providing an opportunity of personal hearing to the petitioner and therefore, this Court is inclined to set aside the impugned order dated 24.09.2021 and accordingly the same is set aside. The matter is remanded back to the second respondent, in which case, since the petitioner has already filed the reply on 27.9.2021, this Court directs the second respondent to re-consider the matter on merits after providing an opportunity of hearing to the petitioner and pass orders in accordance with law.

7. The learned counsel for the petitioner submitted that the petitioner has deposited 20% of the tax amount and seeks for refund of the same, since the impugned order has been set aside.

8. However, this Court does not want to express any opinion on the deposited tax amount. Once the impugned order is set-aside, it is for the petitioner to approach the authorities in accordance with law and respondents shall reconsider the matter and reply on the aspect of refund.

9. Accordingly, this writ petition is disposed of. Consequently, the connected miscellaneous petitions are also closed.

12.10.2023

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
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KRISHNAN RAMASAMY.J.,
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