IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.10.2023

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.7750 of 2023
and
W.M.P.No.7949 of 2023

Munirajappa Ravi

... Petitioner

Vs.

1.Income Tax Officer,
National Faceless Assessment Centre,
Delhi.

2.Income Tax Officer, Ward-1, Hosur,
Income Ta Office, 737/1, 1st Floor,
R.K.Towers, Maruthi Nagar, Hosur 635 109.

... 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 of the respondent in DIN: ITBA/AST/S/147/2021-22/1041577531(1) relating to the assessment order passed under Section 144 read with Section 147 read with Section 144B of the Income Tax Act, 1961 for the assessment year 2017-18 in PAN:AJTPR8148J dated 25.03.2022 and quash the same.

For Petitioner : Mr.T.Vasudevan

For Respondent : Ms.S.Premlatha,
Junior Standing counsel
for Mr.R.S.Balaji,
Senior Standing counsel

ORDER

This writ petition has been filed challenging the impugned order passed by the first respondent dated 25.03.2022.

2. The learned counsel for the petitioner would submit that the impugned order came to be passed under Section 144 read with Section 147 of the Income Tax Act, 1961 (hereinafter called as "IT Act") stating that the petitioner had not responded to the notices issued by the respondent. Under these circumstances, on 01.11.2022, the Bank informed about the attachment order passed by the Department attaching the bank account of the petitioner. Thereafter only, the petitioner came to know about the impugned order passed by the respondent and hence, filed this writ petition challenging the said impugned order on the ground of violation of principal of natural justice.

3. On the other hand, the learned counsel for the respondent would submit that the notice under Section 148 of the IT Act was served upon the assessee/petitioner on 03.04.2021 by way of post. The acknowledgement card was also filed, whereby it is clear that only the assessee had received the said notice on 03.04.2021. Thereafter, the assessment order was also received by the assessee as stated in the paragraph No.2.7 of the counter affidavit filed by the respondent.

4. Further he would submit that in paragraph No.4 of the present writ petition, it was stated that the assessee had never opened the e-portal between the period 31.01.2022 and January 2023, which is incorrect since the assessee had filed the returns for the assessment year 2021-2022 on 15.03.2022 and filed the audit report for the assessment year 2021-2022 on 21.03.2022 in the e-portal. Hence, he would contend that the said statement of the assessee that he never opened the e-portal is a false statement. Therefore, he prayed for dismissal of this writ petition.

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

6. On perusal of the records, it is an admitted fact that the Authorised representative of the petitioner was passed away on 29.12.2017. Thereafter, the notice under Section 148 of the IT Act was issued on 31.03.2021 by way of post and the same was received by the petitioner on 03.04.2021. Thereafter, all the notices were uploaded in the e-portal and the e-portal was also accessed by the petitioner. In fact, the assessment order also sent by virtue of post and the acknowledgement card was filed before this Court. As stated in paragraph No.2.7 of the counter affidavit of the respondent, between the period of date of issuance of notice and till the date of assessment, the assessee had accessed the e-portal for filing the income tax returns for assessment year 2021-2022 and for filing the audit report for the assessment year 2021-2022.

7. When such being the case, I do not find any force in the submissions made by the learned counsel for the petitioner that the impugned order was passed in violation of principal of natural justice since the respondent had already taken all the efforts to send the notices to the petitioner through physically as well as by uploading the same in the e-portal. Further, it is clear that only due to inaction on the part of petitioner in filing the reply, this assessment order came to be passed.

8. Under these circumstances, the assessee themselves had given up their rights for personal hearing and filing of reply in the present case. However, in the scheme of the IT Act, the assessee will have two opportunities to present their case. One is before the Assessing Officer and another is before the Appellate Authority. The Appellate Authority will also have similar power of the Assessing Officer to adjudicate the petitioner's case.

9. In the present case, the petitioner himself had voluntarily given up the rights of filing the reply and personal hearing before the Assessing

Officer. Hence, once a person had given up his rights, he cannot claim it back as he lost his opportunity. In such situation, he has to avail the second opportunity to present their case before the Appellate Authority.

10. In view of the above, this Court is not inclined to entertain this writ petition. However, this Court is inclined to provide a period of 30 days to the petitioner to file the appeal before the Appellate Authority. In such case, the Appellate Authority shall consider the same on its own merits by providing opportunity to the petitioner without pressing for limitation.

11. Accordingly this writ petition is dismissed. Consequently, the connected miscellaneous petition is also closed.

13.10.2023

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

KRISHNAN RAMASAMY.J.,

nsa

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(1/2)