IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.9812 of 2023
and
W.M.P.Nos.9894 & 9895 of 2023

Kajal S.Jain,
Erstwhile Partner of the dissolved Firm
"Sankheswara Stocks",
23, Reddy Raman Street,
Chennai – 600 079. .. Petitioner

Vs.

The Income Tax Officer,
Assessment Unit,
Income Tax Department,
Income Tax Office, BSNL Tower,
No.16, Greams Road,
Chennai – 600 006. .. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the respondent culminated in the Impugned Order – ITBA/AST/S/147/2022-23/1050087471(1) dated 24.02.2023 for the Assessment Year 2015 – 2016 under Section 147 read with Section 144 read with Section 144B of the Income Tax Act, 1961 and consequential Demand Notice – ITBA/AST/S/156/2022-23/1050087559(1) dated 24.02.2023 issued under Section 156 of the Income Tax Act, 1961, Notice of Penalty –

ITBA/PNL/S/271(1)(c)/2022-23/1050087543(1) dated 24.02.2023 issued under Section 274 read with 271(1)(c) of the Income Tax Act, 1961 and quash the same as illegal, arbitrary and devoid of merit.

For Petitioner : Mr.Akhil R.Bhansali

For Respondent : Dr.B.Ramaswamy
Senior Standing Counsel

O R D E R

The petitioner is challenging the impugned order for the Assessment Year 2015 – 2016, demand notice and notice of penalty, all dated 24.02.2023 issued by the respondent.

2.The petitioner is the wife of (Late) Sripal Kumar Jain, with whom the petitioner was doing business in a partnership concern under a partnership deed dated 01.04.2003 and was said to be trading of stocks and shares from 01.04.2003. The petitioner claims to have retired from the said partnership firm with effect from 31.03.2011.

3.It is further case of the petitioner that her husband (late) Sripal Kumar Jain, who died on 07.09.2021 was carrying on business of the partnership firm in the same name as a proprietor. It is further submitted that the petitioner's husband (Late) Sripal Kumar Jain continued to file regular income tax returns as an assessee and was being assessed to income tax on the income.

4.It is submitted that the only mistake that appears to have been committed by the petitioner's late husband was that the PAN number of the firm which stood dissolved on the said date was continued to be used by her husband (late) Sripal Kumar Jain while carrying on business after petitioner ceased to be a partner.

5.That apart, the learned counsel for the petitioner further submits that several notices were issued for re-opening the assessment on 31.03.2022 and on various dates. Thereafter, various notices were issued under Section 142(1) of the Income Tax Act, 1961, which however were not received by the petitioner. Only the notice dated 08.02.2023 was received by the petitioner.

6.It is submitted that the notices were only uploaded in the web portal. However, the petitioner was unaware of the same and thus, failed to respond to the same.

7.It is submitted that after the notice dated 08.02.2023 was received, reply was given by the petitioner explaining the position that the said partnership firm had indeed stopped carrying on business from 2011 and that business is carried on by the petitioner's husband as a proprietary concern and that he was also being assessed to income tax separately.

8.It is submitted that no notice was issued to the petitioner. It is submitted that the petitioner is only the legal representative of (late) Sripal Kumar Jain and hence, prays for quashing the impugned order.

9.The learned Senior Standing Counsel on the other hand submits that huge amount of money was transacted using the Firm's PAN number and there is also no proper explanation was given to the respondent and therefore, the impugned order has been passed.

10.It is further submitted that despite providing ample opportunities, the petitioner choose to remain silent and failed to answer to the notice issued under Section 142(1) of the Income Tax Act, 1961.

11.It is submitted that only a partial reply was given to the show cause notice which was not convincing and therefore, an order has been passed by adding the amounts to a sum of Rs.9.41 crores as undisclosed income (from equity transactions) and Rs.6.4 crores as unexplained investment (by way of cash deposit) under Section 69 r/w Section 115 BBE of the Income Tax Act, 1961.

12.It is further submitted that the petitioner has alternative remedy by way of an appeal before the Appellate Commissioner and therefore, n this ground also, the Writ Petition is liable to be dismissed and prays for dismissal of the Writ Petition.

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

14.The retirement and dissolution deed dated 31.03.2011 filed along with the typed set of papers indicates that the petitioner has resigned from the partnership firm and therefore, the partnership firm was no longer in existence. After the dissolution deed was signed, no steps were taken by the petitioner's husband (late) Sripal Kumar Jain to make changes in the Bank Accounts maintained by the partnership firm to state that the firm continued to exist and that the business of the firm was being carried on by him as the sole proprietor.

15.The fact also remains that the petitioner's husband (late) Sripal Kumar Jain died on 07.09.2021. The proceedings came to be initiated only after the death of (late) Sripal Kumar Jain with the issuance of notice dated 31.03.2022 under Section 148 of the Income Tax Act, 1961.

16.A portion of the notice issued under Section 142(1) of the Income Tax Act, 1961 thus remains unanswered although they were posted in their web portal in accordance with the provisions of the Income Tax Act, 1961 read with Income Tax Rules, 1962.

17.However, while passing the order, the respondent ought to have compared the income that was proposed to be added pursuant to notice dated 31.03.2022 with the income declared by the petitioner's deceased husband (late) Sripal Kumar Jain, while finalizing the assessment. There is no comparison.

18.Considering the above, Court is inclined to set aside the impugned order and remits the case back to the respondent to pass a fresh order on merits and in accordance with law within a period of eight (8) weeks from the date of receipt of a copy of this order. The petitioner is directed to file all the documents that were called for in pursuant to the notice issued under Section 142(1) of the Income Tax Act, 1961 and give a proper reply to the various show cause notices issued to the petitioner.

19.The petitioner is directed to co-operate with the respondent. The respondent shall scrutinize all the documents and pass a fair order on merits and in accordance with law. Needless to state that before passing such order, the petitioner shall be heard.

20.The Writ Petition is disposed of with the above observations. Consequently, the connected Miscellaneous Petitions are closed. No costs.

04.09.2023

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

C.SARAVANAN, J.

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To

The Income Tax Officer,
Assessment Unit,
Income Tax Department,
Income Tax Office, BSNL Tower,
No.16, Greams Road, Chennai – 600 006.

W.P.No.9812 of 2023

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