IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.No.10860 of 2022
and
W.M.P.No.10482 of 2022

Senthilkumar ...Petitioner

Vs.

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

2.The Income Tax Officer,
Non-Corporate Ward 6(1),
BSNL Tower, No.16, Greams Road,
Chennai - 600 006. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records of the 1st respondent and quash the impugned order in PAN ECKPS5938D in DIN- ITBA/AST/S/147/ 2021-22/1041762973(1) dated 27.03.2022 passed by 1st respondent under Section 147 read with section 144 B of the Income Tax Act 1961 (ACT) for the Assessment Year 2017-18.

For Petitioner : Mr.N.V.Balaji

For Respondents : Dr.B.Ramaswamy
Senior Counsel

ORDER

This Writ Petition has been filed to quash the impugned order of the 1st respondent in PAN ECKPS5938D in DIN-ITBA/AST/S/14, dated 27.03.2022 for the Assessment Year 2017-2018.

2.It is the case of the petitioner that the 2nd respondent issued notice under Section 142(1) of the Income Tax Act dated 13.11.2021 for the Assessment year 2017-2018 informing the petitioner that notice sent under Section 148 of the Act dated 30.03.2021 was served on 06.08.2021 by notice server. The purported attached notice could not be downloaded by the petitioner. Thereafter, the

1st respondent issued another notice dated 07.02.2022 under Section 142(1) of the Act seeking certain details, which was noticed by the petitioner and thereafter, on 02.03.2022 and on 0703.2022, the petitioner received SMS alert to respond to the said notice under the Faceless Assessment Scheme along with required documents and proper explanation. Thereafter, the respondent issued a show cause notice to the petitioner on 12.03.2022 requesting the petitioner to file his reply.

3.The learned counsel appearing for the petitioner would submit that the petitioner did not notice the show cause notice sent through e-mail which was maintained by his Auditor and therefore, he was not able to reply to the same. The 1st respondent passed the assessment order on 27.03.2022 making addition of Rs.1,40,36,250/- under Section 69A read with Section 115 BBE of the Act. On realising that some orders have been passed by the respondents, the petitioner contacted his Auditor, since he was not aware of the nuances of the Income Tax Act and the re-opening proceedings had been conducted in connection with cash deposit of Rs.1,40,36,250/- in his Current Account during the financial year 2016-2017. Hence, this Writ Petition has been filed to quash the impugned order.

4.*Per contra,* the learned counsel for the respondents would submit that though the petitioner has been provided opportunities they have not utilized the same and therefore, this Writ Petition ought to be dismissed on the ground of availability of statutory appellate remedy. Inspite of several reminders, the petitioner has not filed his submissions along with required documents. In these circumstances, the respondent passed the impugned assessment order.

5.In response to the same, the learned counsel appearing for the petitioner would submit that the petitioner is an illiterate and now, he is ready to comply with any order passed by this Court and they are ready to participate and contest the case after proper advice. This is the first occasion, the petitioner has received notice. Therefore, he confused totally what to do with this case. Hence, he pleaded to afford an opportunity to the petitioner to file his return.

6.Heard the learned counsel appearing on either side and perused the papers.

7.A perusal of the records, it appears that the petitioner is an illiterate person and he did not file any return earlier and it is the first time that he received the intimation by virtue of SMS and letters. Therefore, he was unable to get a proper advice from the professionals. The fact remains that the impugned assessment order has been passed without providing opportunity of personal hearing and to file reply to the petitioner.

8.In such a view of the matter that the sole contention to provide one more opportunity to the petitioner before passing the impugned order should not be deprived of and in view of the compliance of the principles of natural justice, this Court is of the considered view that the order passed by the respondent is liable to be set aside, since the same was passed without providing opportunity of personal hearing and to file reply to the petitioner. Hence, the order passed by the Assessment Authority is liable to be set aside and accordingly, the same is set aside. While setting aside the order, this Court remits the matter for re-assessment and directs the respondent to provide opportunities to make their submissions along with the documents and after providing personal hearing, the respondent is directed to pass final assessment order in accordance with Law.

Accordingly, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

10.10.2023

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation Case : Yes/No
mps

To

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KRISHNAN RAMASAMY, J.

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