IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2023

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.11140 of 2022
and
W.M.P.Nos.10733 & 10734 of 2022

Parasuramn Samy Parasu Prabhakaran .. Petitioner

Vs.

1.The Additional / Joint / Deputy /
Assistant Commissioner of Income Tax,
Income Tax Officer,
National Faceless Assessment Centre,
North Block, New Delhi – 110 001.

2.The Income Tax Officer,
Non-Corporate Ward – 5(1) CHE,
II Floor, BSNL Building,
Greams Road,
Chennai – 600 006. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records of the 1st respondent in PAN No.BJHPP3510R dated 23.03.2022 (DIN No.ITBA/AST/S/147/2021-22/1041336962(1), and quash the same.

For Petitioner : Mr.K.Soundara Rajan

For Respondents : Dr.B.Ramaswamy
Senior Standing Counsel

O R D E R

The petitioner is aggrieved by the impugned assessment order dated 23.03.2022, bearing reference ITBA/AST/S/147/2021-22/1041336962(1).

2.By the impugned order, the respondents have arrived at the taxable income of the petitioner at Rs.2,70,51,019/- under Section 147 r/w Section 144B of the Income Tax Act, 1961. The impugned order also states that separate proceedings for penalty were being initiated under Sections 270A, 271AAC, 271B and 271F of the Income Tax Act, 1961. The impugned order also discloses interest payable by the petitioner under Sections 234A, 234B and 234C as applicable.

3.The specific case of the petitioner is that the petitioner was served with the show cause notice dated 12.03.2022. The petitioner obtained a certificate from its Banker in respect of the accounts maintained by him in Bank of Baroda, Wimco Nagar Branch, T.H.Road, Tiruvottiyur, Chennai – 600 019, wherein it has been categorically stated as follows:

> *"The above current account does not have transactions of total deposit of Rs.1,33,14,645/- and total withdrawal of Rs.1,19,42,145/- during the FY:2016-17 as mentioned in the questionnaire of notice u/s 142(1) of Income Tax Act, 1961. Further, the above mentioned Account holder does not have any kind of accounts maintained except above mentioned accounts with our branch.*
>
> *This certificate is issued on the specific request of the customer for the account holder for Income Tax assessment purpose only."*

4.It is submitted that despite certificate from the Banker, the 1st respondent has proceeded to pass the impugned order dated 23.03.2022 stating that the certificate issued by the Bank of Baroda on 24.01.2022 does not seem to be genuine and that the petitioner has not furnished the copies of the bank statement, which were called for from the petitioner under a notice issued under Section 142(1) of the Income Tax Act, 1961, on 22.07.2021.

5.The learned counsel for the respondents submits that the petitioner has not filed the Income Tax returns and therefore, the notice was earlier issued on 29.03.2021 asking the petitioner to file the return. There was no response. It is submitted that another notice under Section

142(1) was also issued on 10.02.2022 and on 21.02.2022, for which the petitioner did not rely. Instead, the petitioner has merely produced a certificate from his Banker and thus, the show cause notice was issued to the petitioner on 12.03.2022. To which also, the petitioner has however not replied to the same.

6.Considering the arguments advanced by the learned counsel for the petitioner and respondents, although the petitioner may have a case to defend himself based on the certificate issued by the Banker on 24.01.2022, the fact remains that the petitioner has been a recalcitrant assessee, who has neither filed the return in time nor responded to any of the notices issued by the Income Tax Department. Mere production of a certificate from the Banker is not sufficient. The petitioner has also not filed all the account statement of his current account in Account No.24760200001041. The petitioner cannot expect this Court to be a fact finding authority to ascertain whether the amount of Rs.1,33,14,645/- was deposited. However, considering the fact that a certificate has been furnished which has been ignored by the respondents, to balance the interest of the petitioner and the respondents, I am inclined to set aside the impugned order and remit the case back to the respondents to pass a speaking order on merits and in accordance with law. The petitioner shall file the reply if any, within a period of 15 days from the date of receipt of a copy of this order.

7.The petitioner shall however deposit a sum of Rs.5,00,000/- within a period of 60 days from the date of receipt of a copy of this order. On such compliance by the petitioner, the respondents shall pass a fresh order on merits within a period of 30 days of such compliance. It is made clear that in case the petitioner fails to comply with this order, the relief granted to the petitioner by this Court shall stand automatically withdrawn *sine die*.

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

05.07.2023

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

C.SARAVANAN, J.

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To

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