IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.07.2023

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THE HON'BLE **MR.JUSTICE C.SARAVANAN**

W.P.No.17347 of 2023
and
W.M.P.Nos.16491 and 16492 of 2023

Ramakrishnan Jayanthi ... Petitioner

Vs.

The Income Tax Officer,
Non-Corporate Ward 11(3),
16, Greams Road,
Chennai – 600 006. ... Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorari, to call for the records on the file of the respondent and quash the order passed by the respondent under Section 148A(d) of the Income Tax Act, 1961, ('Act') in PAN: ADIPJ4617P, DIN and Notice No-ITBA/AST/F/148A/2022-23/1051062161(1) dated 21.03.2023 for the Assessment Year ('AY') 2016-17 (impugned order), along with the notice issued by the respondent under Section 148A(b) of the Act in PAN: ADIPJ4617P, DIN and Notice No: ITBA/AST/F/148A(SCN)/2022-23/1050402136(1) dated 04.03.2023 for the AY 2016-17 (impugned notice No.1) and the notice issued by the respondent under Section 148 of the Act in PAN: ADIPJ4617P, DIN and Notice No: ITBA/AST/S/148_1/2022-23/1051064390(1) dated 21.03.2023 for the AY 2016-17 (impugned notice no.2).

For Petitioner : M/s.NV.Lakshmi

For Respondent : Dr.B.Ramaswamy
Senior Standing Counsel

ORDER

The petitioner has challenged the impugned order disposing the petitioner's objection in response to a notice issued under Section 148A(b) of the Income Tax Act, 1961 on 04.03.2023. By the impugned order dated 21.03.2022, the respondent has held as under:-

> "3.Thereafter, on 04/03/2023 the assessee was provided with an opportunity of being heard by serving a notice upon the assessee under Section 148A(b) to show cause why a notice under Section 148 should not be issued on the basis of the above information which suggested that the income chargeable to tax has escaped assessment for the relevant assessement year. The Assessee was requested to submit reply by 15/03/2023 along with documents in support of the submission. The notice was delivered on the mail id of the assessee on 07/03/2023.
>
> 4.No reply was received by the due date.
>
> 5.Hence, it is construed that the assessee has not disputed the evidence in the form of information provided by the INSIGHT PORTAL in accordance with the Risk Management Strategy. The document/evidence in possession reveal that the income chargeable to tax,

> represented in the form of an asset, being sale consideration received from sale of immovable property amounting to Rs.90,00,000/- and interest received from Bank of Baroda amounting to Rs.1,92,549/- has escaped assessment. Hence, I am satisfied that it is a fit case for issue of notice under Section 148 of the Income Tax Act, 1961.
>
> 6.The order under Section 148A(d) is passed with the prior approval of the specified authority Principal Chief Commissioner of Income-tax under Section 151 of the Income Tax Act, 1961."

2. Pursuant to the aforesaid order, a notice issued under Section 148A of the Income Tax has also been issued to the petitioner.

3. The case of the petitioner is that the petitioner is a widow, whose Income Tax obligations have been looked after by her son Venu Shrinivas.

4. The facts on record seems to be indicate that the petitioner had given her E-mail ID as JAYANTHI.RAMAKRISHNAN23@gmail.com which is captured in the master profile of the petitioner. This profile has not been altered till 02.03.2023.

5. The specific case of the petitioner is that since the petitioner's son was handling all her obligations under the Income Tax Act, 1961, the petitioner's son had created a profile by giving his E-mail ID as early as December 2014 i.e, (14.12.2014) to all communications are received. It is the further specific case of the petitioner, that for the Assessment year 2014-2015 (Previous Assessment Year), the petitioner had filed a return with the address/E-mail ID of the petitioner's son venushrinivas123@gmail.com. Despite the same, the respondent have sent a E-mail to JAYANTHI.RAMAKRISHNAN23@GMAIL.COM which preceeding the impugned order given in the master profile of the petitioner, which went not noticed. Therefore, notice issued under 148A(b) of the Income Tax Act, 1961 on 04.03.2023 was not noticed.

6. The learned counsel for the petitioner submits that one opportunity may be given to the petitioner, as there is a confusion. It is submitted that the petitioner is an aged person and is not tech-savvy who depends on her son and failed to notice that the notice issued under Section 148A(b) of the Income Tax had been sent to her personal E-mail ID JAYANTHI.RAMAKRISHNAN23@GMAIL.COM.

7. This Court on an earlier occasion had raised the following query on 22.06.2023. Relevant portion of the order of this Court reads as under:

> The parties have filed affidavits in support of their respective positions.
>
> 2. However, the critical point relates to the document at page 2 of compilation filed on 13.06.2023 which is stated to be a profile summary of the petitioner containing address as '15/8, Pattammal Street, Mandaveli, Chennai 600 028, Tamil Nadu' and mail id as 'JAYANTHI.RAMAKRISHNAN23@gmail.com'.
>
> 3. According to learned counsel for the petitioner, this profile has not been created by the petitioner. Though the address is admitted, the email id has not been supplied by her.
>
> 4. This Court is unable to appreciate how an assessee's profile, could contain particulars which the petitioner / assessee disavows. The Technical Wing of the Income-Tax Department will file an affidavit as to (i) when the profile at page 2 has been created, (ii) from which I.P. Address it has been created, (iii) whether there have been any modifications thereto after creation and (iv) details of IP address for which the modifications were made.

8. Pursuant to the above, the respondent had filed a written submission. It has been explained that the address given in the master profile was the address to which the E-mail was sent under Section 148A(b) of the Income Tax Act. It is submitted that the notice was also sent by post to the address given in the master profile by the petitioner which was returned with an endorsement “no such person”.

9. The learned Senior Standing Counsel for the respondent has placed reliance on the decision of this Court in the case of ***Manas*** Vs. ***Income-tax Officer*** reported in (2023) 151 taxmann.com 410(Mad), wherein, this Court had deprecated the practice and had imposed the cost of Rs.1,00,000/- on the petitioner therein for taking advantage of the technicality involved in the filing of the returns.

10. The learned Senior Standing Counsel for the respondent has also placed reliance on the decision of the Hon'ble Division Bench of this Court in W.P.No.27997 of 2021 in the case of ***Malavika Enterprises*** Vs. ***Central Board of Direct Taxes and Others*** and another decision of the Bombay High Court in the case of ***Chowgule Industries Private Limited*** Vs. ***Assistant Commissioner of Income Tax*** reported in [2022] 142 taxmann.com 472 (Bombay).

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

12. The petitioner has been assessed during the Assessment year 2014-2015. The petitioner had given the address at the time of creation of profile as venushrinivas123@gmail.com under Rule 127(2)(111).

13. The petitioner has however given ID i.e., JAYANTHI.RAMAKRISHNAN23@GMAIL.COM as the E-mail in the master profile. The fact also remains that the petitioner has given another E-mail ID. All the communications came to be forwarded to the petitioner's son E-mail ID who was handling her Income Tax obligations of the petitioner including filing of the returns and replies to various notices that are issued under the Income Tax Act.

14. There is a bonafide mistake and the part of the petitioner in not replying to the notice issued under Section 148A(b) sent to E-mail ID given in the master profile created by the petitioner. Allowance has to be given to the petitioner for not responding to notices considering the fact that the petitioner is not a tech-savvy person and is dependent on her son. Court can take judicial notice of the fact that petitioner is familiar with technology involved in the assessment procedure.

15. The Court is therefore inclined to set aside the impugned order and remits the case back to the respondent to pass a fresh order within a period of 60 days from the date of receipt of a copy of this order. The petitioner shall file reply, if any, within a period of 15 from the date of receipt of a copy of this order.

16. This writ petition stands allowed with the above observations. No costs. Consequently, connected writ miscellaneous petitions are closed.

17.07.2023

Index : Yes/No
Internet : Yes/No
Speaking/Non-speaking Order
Neutral Citation:Yes/No
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To

1.The Assistant Commissioner of Income Tax
Corporate Circle 4(1),
No.121, M.G.Road, Nungambakkam,
Chennai – 600 034.

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

C.SARAVANAN, J.

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