IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.07.2023

PRONOUNCED ON : 06.07.2023

CORAM

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.No.19218 of 2023
and W.M.P.Nos.18443 to 18446 & 18448 of 2023

Junaitha Begum ... Petitioner

vs

1.The Assessing Officer of the Assessment Unit,
Income Tax Department,
Mayur Bhawan, Connaught Lane,
Barakhamba, New Delhi, Delhi 110 001.

2. The Income Tax Officer, Ward 1,
No.1, Chairman Subbarayar Street,
West Shanmugapuram,
Villupuram, Tamilnadu 605 602.

3. The Principal Commissioner of Income Tax,
Chennai – 3, Income Tax Office,
No.121, Nungambakkam High Road,
Chennai 600 034. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the writ petitioner on the file of the first respondent to quash the impugned order dated 09.05.2023 passed u/s 147 read with Section 144B of the Act for the Assessment Year 2015-16 in DIN:ITBA/AST/S/147/2023-24/1052676730(1) and consequently recovering the demand quantified in the demand notice issued u/s 156 of the Income Tax Act, 1961 on 09.05.2023 in DIN and Notice No.ITBA/AST/S/156/2023-24/1052676829(1) and from continuing the penalty proceedings initiated u/s Section 271(1)(c) read with Section 274 of the Act vide show cause notice dated 09.05.2023 in DIN:ITBA/PNL/S/271(1)(c)/2023-24/1052676806(1) first respondent and quash the same.

For Petitioner : Mr.M.Muruga boopathy

For Respondent : Mr.R.S.Balaji
Senior Standing Counsel.

ORDER

The petitioner has challenged the impugned Assessment Order dated 09.05.2023 passed under Section 147 r/w 144(B of the Income Tax Act, 1961.

2. By the impugned order, the total income of the petitioner has been taxed to a taxable income of Rs.60,08,010/-. The specific case of the petitioner is that though the petitioner has explained regarding the

variation and fact that the amount was received much earlier and was accounted in the returns filed by the petitioner for previous assessment year and the same has not been considered in the impugned Assessment Order dated 09.05.2023 passed under Section 147 r/w 144(B of the Income Tax Act, 1961.

3. It is submitted that the proceeding initiated in DIN & Notice No.ITBA/AST/148/2021-22/1033935368(1) for the Assessment Year 2015-16 was closed in DIN & Letter No.ITBA/AST/S/63/2022-23/1048810205(1) dated 17.01.2023 in view of older proceeding which has been now rendered redundant being covered by the decision of Hon'ble Supreme Court.

4. It is further submitted that without giving adequate time, the assessment was completed in an pre-emptive manner and has thus resulted in gross violation of principles of natural justice. It is further submitted that the Assessing Officer while passing the impugned order, rejected the petitioner's request for adjournment and has erroneously stated that " the assessee did not furnish any response in this regard'. Hence, it is

submitted that the impugned order is liable to be set aside in terms of the decision of this Court in ***Parthasarathy Chita v. ITO*** (2022) 143 taxmann.com 329 (Mad).

5. It is further submitted that the first respondent while passing the impugned order has brought to tax two items of additions without considering the petitioner's response, creating undue hardship and irreparable loss to the writ petitioner/Assessee by raising a wrong, unsustainable artificial demand, forcing the writ petitioner/Assessee to file this writ petition under Article 226 of the Constitution of India for appropriate interference by this Court.

6. I have considered the arguments advanced by the learned counsel for the petitioner. I have perused the impugned order. The attempt of the petitioner to contrive the jurisdiction of this Court under Article 226 of the Constitution of India on the ground of violation of principles of natural justice cannot be countenanced. The petitioner has given his explanation which was found in adequate. Therefore, the Assessing Officer has passed the impugned order under Section 147 r/w 144B of the Income Tax Act, 1961.

7. A reading of the impugned order indicates that the petitioner has deposited a sum of Rs.52,85,000/- in the wake of demonetization. Therefore, the petitioner was called upon to give his explanation. The petitioner has however not properly explained the facts surrounding deposit of the aforesaid sum of Rs.52,85,000/-. Hence, the impugned order was passed by the respondent.

8. Therefore, there is no merits to challenge the impugned order in the writ petition. As such this writ petition cannot be entertained, as the petitioner has an alternate remedy before the Appellate Commissioner.

9. Therefore, this writ petition is dismissed with liberty to the petitioner to file statutory appeal against the impugned order before the Appellate Commissioner within a period of 30 days from the date of receipt of a copy of this order. In case such an appeal is filed by the petitioner within such time, the Appellate Commissioner shall consider the same and pass appropriate orders on merits in accordance with law. Needless to state the petitioner shall be heard before the order is passed in

the proposed appeal. No costs. Consequently, connected miscellaneous petitions are closed.

06.07.2023

Index : Yes/No
Internet : Yes/No
Speaking/ Non-speaking Order
kkd

To

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C.SARAVANAN,J.

kkd

Pre-delivery Order in
W.P.No.19218 of 2023

06.07.2023