IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **16.11.2023**

CORAM:

THE HON'BLE MR. JUSTICE KRISHNAN RAMASAMY

W.P. No.20897 of 2023
and WMP Nos.20263 & 20266 of 2023

Mrs.Pramila ... Petitioner

vs.

1. Assessment Unit
Income Tax Department
New Delhi.

2.The Assistant Commissioner of Income Tax
Non-Corp Circle – 4(1) CHE
Bsnl Building, II Floor, Income Tax Office,
No.16 Greams Road, Chennai
Tamil Nadu – 600 006.

3.The Principal Commissioner of Income Tax
No.16, Greams Road,
Chennai, Tamil Nadu – 600 006. ... Respondents

Prayer : Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records on the file of the 1st respondent and quash the impugned order u/s 147 r/w Section 144 B of the Income Tax Act, 1961 in ITBA/AST/S/147/2023-24/1052854824 (1) dated 14.05.2023 passed by the 1st respondent for the AY 2016-17 as illegal.

For Petitioner : Mr.R.Sivaraman

For Respondents : Dr.B.Ramaswamy,
Senior Standing Counsel

ORDER

The present writ petition has been filed challenging the impugned assessment order passed u/s 147 r/w Section 144 (B) of the Income Tax Act 1961 in ITBA/AST/S/147/2023-24/1052854824 (1) dated 14.05.2023 by the 1st respondent for the AY 2016-17 dated 14.05.2023.

2. The following issues were raised by the petitioner in the present writ petition -

(i) without providing an opportunity of personal hearing inspite of the request made by the petitioner, the impugned order came to be passed and

(ii) without obtaining proper sanction from the appropriate authority under Section 151 (2) of the Income Tax Act, proceedings were initiated against the petitioner.

3. The learned counsel appearing for the petitioner would submit that though the petitioner made a request for providing an opportunity of personal hearing , the same was not considered by the 1st respondent and the present impugned has been passed.

4. On the other hand, the learned Senior Standing Counsel appearing for the respondents would contend that the petitioner has been provided number of opportunities and several communications have been sent to the petitioner, requesting him to furnish the documents. Since the petitioner has not furnished the documents called for by the respondents, the present impugned order came to be passed.

5. I have given due consideration to the submissions made by the learned counsel appearing for the petitioner as well as the learned Senior Standing Counsel appearing for the respondents and have gone through the relevant papers submitted by both sides.

6. On perusal of the documents submitted by the learned counsel appearing for the petitioner as well as the counter affidavit filed by the learned Senior Standing Counsel appearing for the respondents, it is seen that the respondents have provided number of opportunities to the petitioner to file the documents by way of communication on several occasions. However, it is to be noted that before passing the assessment order, no personal hearing opportunity was provided to the petitioner to make the submission of the petitioner in person, inspite of his request made for video conferencing. On earlier occasions, the respondents have sent communications whereby requesting the petitioner to provide the documents and since the petitioner has not furnished the same, the respondent has passed the impugned order.

7. When the respondent has issued the Show Cause Notice, in the event if any reply is filed, even after the receipt of the reply, it is the duty of the respondents to provide an opportunity of personal hearing. Even in those situation where no reply has been filed by the petitioner and the relevant documents as requested by the respondents have not been furnished before them, the respondents were supposed to provide

opportunity of personal hearing to the petitioner to put forth her case. Though the learned Senior Standing Counsel for the respondents vehemently opposed with regard to providing an opportunity of personal hearing to the petitioner, this Court, for the reasons recorded above that though opportunities were provided by the respondents for filing the reply and furnishing documents, that would not be sufficient to meet out the requirement of opportunity of personal hearing before passing the impugned order by the respondents.

8. Thus, it would be appropriate to direct the respondents to provide an opportunity of personal hearing to the petitioner on the date to be fixed by the respondents, therefore this Court is inclined to remand the matter back to the authority concerned.

9. With regard to the second issue raised by the petitioner that without obtaining proper sanction from the appropriate authority proceedings were initiated against the petitioner is concerned, this Court is not inclined to go into this issue and it is left open to the petitioner to raise the said issue before the respondents at the time of personal hearing.

10. Accordingly, the matter is remanded back to the authority concerned with a direction to the respondents to provide an opportunity of personal hearing to the petitioner and after affording such opportunity, the authority concerned is directed to pass the Assessment Order.

11. With the above direction, this writ petition is disposed of. There shall be no order as to costs. Consequently connected Miscellaneous Petitions are closed.

16.11.2023

Index: Yes/No
Speaking/Non-Speaking Order
Neutral Citation: Yes/No.
rgr

To

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KRISHNAN RAMASAMY, J.

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