IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2023

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THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.No.22547 of 2022
and
W.M.P.Nos. 21573 and 21574 of 2022

Raja Doss Balachandran,
37/28, Bajanai Koil Street,
Choolaimedu,
Chennai – 600 094.
PAN:AEWPB8868D ... Petitioner

Vs.

1.The Income Tax Officer,
National Faceless Assessment Centre, Delhi,
Room No.401, 2nd Floor,
E-Ramp, Jawaharlal Nehru Stadium,
Delhi – 110 003.

2.The Income Tax Officer,
Non Corporate Ward – 19(4), Chennai,
Income Tax Department,
121, Nungambakkam High Road,
Chennai – 600 034.

3.The Principal Commissioner of Income Tax,
Chennai -4,
Income Tax Department,
121, Nungambakkam High Road,
Nungambakkam,
Chennai – 600 034. ... Respondents

Prayer: 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 Company on the file of the First Respondent to quash the impugned order dated 26.03.2022 passed u/s 143(2) r.w.s.144B of the Act for the Assessment Year 2017-18 in DIN ITBA/AST/S/147/2021-22/1041688538(1) and consequently direct the first respondent to complete the fresh assessment for the assessment year 2017-18 after granting reasonable/sufficient opportunity of hearing.

For Petitioner : Mr.A.S.Sriraman
For Respondents : Mr.R.S.Balaji
Senior Standing Counsel
assisted by Ms.S.Premalatha,
Junior Standing Counsel

ORDER

This writ petition has been filed challenging the impugned assessment order dated 26.03.2022, passed by the 1st respondent.

2. The case of the petitioner is that the show cause notice dated 23.03.2022 was issued by the 1st respondent providing only two days time for filing a reply i.e. on or before 25.03.2022 and the said show cause notice was uploaded only in the e-portal. Subsequently, the impugned assessment order was passed on 26.03.2023 by the 1st respondent.

3. Mr.A.S.Sriraman, learned counsel for the petitioner would submit that the petitioner had come to know about this impugned order only when the respondent made an attachment of the petitioner's bank account by virtue of the attachment order dated 08.08.2022. Thereafter, the petitioner has immediately approached this Hon'ble Court by virtue of this writ petition.

4. In response, learned counsel for the respondents would submit that they have sent the approved physical notices calling for the information from the petitioner before issuing the show cause notice dated 23.03.2022. But the petitioner has not at all responded to those notices. Therefore, the faceless assessment officer has issued the show cause notice dated 23.03.2022 by providing two days time to file a reply and thereafter passed the impugned assessment order dated 26.03.2022. He has further submitted that it is not that the respondent has not at all provided any personal hearing opportunity to the petitioner. Therefore, he would submit that since an alternate remedy is available to the petitioner, he can very well approach the appellate authority and work out his remedy.

5. Heard both sides and also perused the materials available on record.

6. There is no dispute on the aspect that the physical officer has sent notices under Section 142(1) years back before the date of issuing show cause notice to the petitioner and the petitioner has also not responded to the said physical notices. In those notices, the officer concerned called for various informations for which the petitioner has to be furnished by virtue of oral submission, but he failed to do so. Therefore, the show cause notice came to be issued on 23.03.2022 by the respondent/faceless assessment officer.

6.1 The respondent took the non-filing of the reply for various notices sent by the physical Officer to the petitioner calling for the information under Section 142(1) as the reason for issuing the show cause notice dated 23.03.2022. It was also noticed that the very next day, the impugned order came to be passed. All the notices were uploaded in the e-portal also. But the petitioner has come to know about those notices only on 08.08.2022, when the bank account of the petitioner was attached by virtue of the attachment order passed by the respondent and thereafter, he approached this Court.

6.2 Learned counsel for the petitioner has also made a submission that since the petitioner has lost his daughter, he was in absent mind and therefore, he was not able to follow the e-portal and that is reason why the notices were unnoticed by the petitioner.

6.3 This Court feels that at any cost, the respondent is supposed to have provided sufficient time i.e., at least 21 days time for filing the reply and thereafter, if no reply was filed, they are supposed to have provided opportunity of personal hearing through video conferencing and these are all the minimum requirements which this Court expects the assessing officer to follow. However, the same has not been followed and the same amounts to violation of principles of natural justice.

6.4 For these reasons, this Court is set aside the impugned assessment order dated 26.03.2022 and remand this matter back to the Authorities concerned/faceless assessment officer who shall pass the order after providing personal hearing opportunity to the petitioner and the petitioner is directed to file a reply within a period of 30 days from the date of receipt of a copy of this order. Further, the respondent is directed to activate the e-portal, so that the petitioner will be able to file his reply within a period of two weeks from the date of activating the e-portal. Thereafter, the respondent is directed to fix the personal hearing for the petitioner and pass final assessment order in accordance with law.

With the above directions, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

27.11.2023

veda
Internet:Yes
Index : Yes / No
Speaking order/Non-Speaking order
Neutral Citation : Yes / No

To

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KRISHNAN RAMASAMY, J.

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(2/2)