IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 01.08.2023	**Pronounced on:** 03.11.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.24676 of 2022
and
W.M.P.Nos.23630 & 23631 of 2022
& 894, 906, 913, 917 & 921 of 2023

Manivannan Kumaragurubaran .. Petitioner

Vs.

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

2.The Income Tax Officer,
Non Corp Ward 10(1),
Room No.619, Sixth Floor, Wanaparthy Block,
No.121, Mahatma Gandhi Road,
Nungambakkam,
Chennai – 600 034.

3.The Additional / Joint Commissioner of Income Tax,
Non Corporate Range 10,
Mahatma Gandhi Road,
Nungambakkam,
Chennai – 600 034. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records in DIN:ITBA/AST/S/147/2021-22/1041127976(1) dated 21.03.2022 on the file of the 1st respondent relating to the A.Y. 2017-18 and quash the same.

For Petitioner : Mr.R.Sandeep Bagmar

For Respondents : Mrs.S.Premalatha
Junior Standing Counsel
for Mr.R.S.Balaji
Senior Standing Counsel

ORDER

The Petitioner has challenged the impugned Assessment Order dated 21.03.2022 passed under Section 147 r/w Section 144 and 144B of the Income Tax Act, 1961 (hereinafter referred to as 'IT Act, 1961').

2.The petitioner had filed Return of Income on 22.03.2018. Scrutiny of assessment was completed under Section 143(3) on 04.12.2019, which was sought to be re-opened with the issuance of a notice dated 26.03.2021 under Section 148 of the IT Act, 1961.

3.The specific case of the petitioner is that at the time when the petitioner had filed the Returns of Income on 22.03.2018, the petitioner had engaged a Chartered Accountant whose e-mail ID was given for the purpose of notice to the petitioner. However, the petitioner had later altered the e-mail ID while filing the Return of Income for the assessment year 2021-22 on 03.01.2021 by giving e-mail his new ID (i.e.,) guru.kgb3700@gmail.com.

4.The specific case of the petitioner is that the respondents ought to have issued Notice under Section 148 of the IT Act, 1961, followed by a proper communication to his e-mail ID guru.kgb3700@gmail.com before passing the Impugned Assessment Order dated 21.03.2022. The e-mail ID given by the petitioner for the assessment year 2020-2021 at guru.kgb3700@gmail.com is different.

5. It is submitted that the notices which preceded the Impugned Assessment Order dated 21.03.2022 were emailed to the petitioner's previous Chartered Accountant kawratnjain@gmail.com and therefore, the petitioner was unaware of communications that preceded the Impugned Assessment Order dated 21.03.2022.

6.It is submitted that the petitioner came to know about the Impugned Assessment Order dated 21.03.2022 only after they had altered the e-mail, when the petitioner came to know that the 1st respondent has issued Notice under Section 272A(1)(d) of the IT Act, 1961 for imposition of penalty on 21.03.2022 and a Show Cause Notice dated 08.08.2022 under Section 274 of the IT Act, 1961.

7.It is submitted that the Impugned Order dated 21.03.2022 has been passed in gross violation of principles of natural justice as the notices were sent to old e-mail ID of the consultant, even though the petitioner has changed the e-mail ID to guru.kgb3700@gmail.com for the Assessment Year 2021-2022.

8.On the other hand, the learned Junior Standing Counsel for the respondents would submit that since the petitioner had not responded to the Notice issued under Section 148 of the IT Act, 1961, the petitioner was also served with the notice manually on 21.02.2022, to which the petitioner had responded, which has also been acknowledged by the Income Tax Department. Since the petitioner failed to respond to the

Show Cause Notice dated 08.08.2022, a Draft Assessment Order dated 17.03.2022 was passed disposing of the objection of the petitioner for re-opening of the assessment under Section 147 / 148 of the IT Act, 1961 for the assessment year 2017-2018 vide communication dated 17.03.2022. It is only thereafter the impugned Assessment Order has been passed on 21.03.2022.

9.It is submitted that the Impugned Order dated 21.03.2022 does not call for any interference. It is submitted that provision to Section 144B(7)(i) of the IT Act, 1961 is categorical. As the notice have been sent to the designated e-mail address of the petitioner in the portal and therefore, there is no merits in the present writ petition and the present writ petition is liable to be dismissed. It is further submitted that the petitioner also has an alternate remedy before the Appellate Commissioner.

10.A specific reference is made to Para.No.3 of the Impugned Order, which reads as under:

> *"3.However, he did not make any compliance to the above mentioned notices. Considering the non-responsive nature of the assessee the case was referred to the*

> *Verification Unit (VU). As per the information of the verification unit a letter enclosing all the earlier notices were sent to the assessee through India Post on 21.02.2022 by which assessee was provided with a final opportunity to submit his reply through the e-proceedings module on the e-filing portal within 7 days of receipt of the notice. As per web portal of India Post, the said notice was delivered to the assessee on 24.02.2022. However, assessee again failed to submit his reply whatsoever. Therefore, on account of non compliance to the notices dated 12.11.2021, 14.12.2021, 10.01.2022 & 03.02.2022 issued to the assessee u/s.142(1) of the Act, penalty proceedings u/s.272A(1)(d) of the Act., is being initiated for the A.Y.2017-18."*

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

12. I have also perused the documents filed by the petitioner in support of the present writ petition.

13. There is no dispute that petitioner has been negligent in not updating the Income Tax Profile by altering the e-mail ID.

14. The communication of notices and orders under the IT Act, 1961 is now system driven. Therefore, it was incumbent on the part of the petitioner to have made suitable changes in the portal, so that the changes would have got auto populated in this system and thus, a notice would have been served on the petitioner in the correct e-mail ID.

15. The petitioner appears to have made changes much after the Impugned Order was passed on 21.03.2022. The Hon'ble Supreme Court recently in the case of **Principal Commissioner of Income Tax, Mumbai** vs. **I Ven Interactive Limited,** (2019) 10 SCC 13, 2019 SCC OnLine SC 1369 held that mentioning of change in the e-mail ID in the Return of Income was not sufficient.

16. The Hon'ble Supreme Court in paragraph 6 held as under:-

> "***6.*** *Now so far as the observations made by the High Court while concurring with the view of the learned Tribunal that merely by filing of return of income with the new address, it shall be enough for the assessee to discharge its legal responsibility for observing proper procedural steps as per the Companies Act and the Income Tax Act is concerned, we are of the opinion that mere mentioning of the new address in the return of income without specifically intimating the assessing officer with respect to change of address and without getting the PAN database changed, is not*

enough and sufficient. In absence of any specific intimation to the assessing officer with respect to change in address and/or change in the name of the assessee, the assessing officer would be justified in sending the notice at the available address mentioned in the PAN database of the assessee, more particularly when the return has been filed under E-Module scheme. It is required to be noted that notices under Section 143(2) of the 1961 Act are issued on selection of case generated under automated system of the Department which picks up the address of the assessee from the database of the PAN. Therefore, the change of address in the database of PAN is must, in case of change in the name of the company and/or any change in the registered office or the corporate office and the same has to be intimated to the Registrar of Companies in the prescribed format (Form 18) and after complying with the said requirement, the assessee is required to approach the Department with the copy of the said document and the assessee is also required to make an application for change of address in the departmental database of PAN, which in the present case the assessee has failed to do so."

17. In paragraph 7 the Hon'ble Supreme Court further observed as under:-

"**7.** *Now so far as the submission on behalf of the assessee that with respect to Assessment Years 2004-2005 and 2005-2006, communications and the assessment orders were sent at the new address and therefore the assessing officer was in the knowledge of the new address is concerned, the same has been sufficiently explained by the Revenue."*

18. The Hon'ble Supreme Court ultimately however remanded the case back to the Commissioner of Income Tax (Appeals) to pass a fresh order.

19. The facts of the present case are slightly different as the petitioner has indeed altered the e-mail ID for the assessment year 2021-2022 to guru.kbg3700@gmail.com.

20. Once it was noticed that the petitioner had failed to respond to notices issued under Section 148 of the IT Act, 1961 on 26.03.2021 and the follow up notices issued under Section 142(1) on 12.11.2021. They were followed up by 14.12.2021, 10.01.2022 and 03.02.2022. The petitioner was served with a physical copy of the notices on 21.02.2022 enclosing the copy of the notices issued under Section 142(1) of the IT Act, 1961.

21. The petitioner has also responded to the same on 12.03.2022. However, on 14.03.2022, the respondents have issued Show Cause Notice / Draft Assessment Order under Section 144B of the IT Act, 1961 by transmitting it to the same old e-mail ID given by the petitioner at the

time of filing of the Return of Income on 22.03.2018. Thus, there is a violation of principles of natural justice.

22. Therefore, the balance interest of the parties, Court is inclined to set aside the Impugned Assessment Order dated 21.03.2022 and remits the case back to the first respondent to pass a fresh order on merits and in accordance with law within a period of six (6) months from the date of receipt of a copy of this order.

23. The first respondent is directed to issue suitable instructions to the administrators to facilitate the petitioner to file a proper response to Show Cause Notice cum Draft Assessment Order dated 14.03.2022.

24. The petitioner shall keep the same ready and upload it as and when the intimation is received. It is noticed that the petitioner has now altered the e-mail ID to rhnp03@gmail.com. The respondents shall send the intimation to the aforesaid e-mail ID.

25. The writ petition stands disposed of with the above observations and directions. No costs. Consequently, connected miscellaneous petitions are closed.

03.11.2023

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

C.SARAVANAN, J.

krk/rgm

Pre-delivery Order in
W.P.No.24676 of 2022
and
W.M.P.Nos.23630 & 23631 of 2022
& 894, 906, 913, 917 & 921 of 2023

03.11.2023