IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.09.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.25303 of 2021
and
W.M.P.Nos.26704 and 26705 of 2021 and W.M.P.No.1724 of 2022

Samuel ... Petitioner

Vs.

1.The Additional/Joint/Deputy/Assistant Commissioner
of Income Tax/Income Tax Officer,
National e-assessment Centre,
Delhi.

2.The Income Tax Officer,
Non Corporate Ward 6(5), Chennai,
BSNL Building, IV Floor,
Income Tax Office-BSNL Tower,
No.16, Greams Road,
Chennai - 600 006. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records on the file of the first respondent and quash the impugned order in ITBA/AST/S/147/2021-2022/1035627928(1) dated 16.09.2021 under Section 147 read with Section 144 read with Section 144B of the Income Tax Act, 1961 passed by the first respondent as illegal and not in accordance with law.

For Petitioner : Mr.Veerabathran
Mr.Prashanth.M
for Mr.R.Sivaraman

For Respondents : Dr.B.Ramaswamy
Senior Standing Counsel

ORDER

The petitioner is aggrieved by the impugned Assessment Order in ITBA/AST/S/147/2021-2022/1035627928(1) dated 16.09.2021 passed by the first respondent.

2. The challenge to the impugned Assessment Order is primarily on the ground that there is a violation of principles of natural justice and failure to pass a Draft Assessment Order as is contemplated under Section 144B(1)(xvi) of the Income Tax Act, 1961 (hereinafter referred to as the IT Act) as it stood during the material period in time.

3. The learned counsel for the petitioner submits that originally the assessment was before the jurisdictional Assessment Officer namely the second respondent. However, thereafter it was referred to the first respondent under the provisions of E-Assessment Scheme, 2019 as it stood

then and thereafter under the provisions of Section 144B of the IT Act as incorporated in the IT Act with effect from 01.04.2021 till 31.03.2022.

4. The learned counsel for the petitioner submits that in response to notice issued under Section 142(1) of the IT Act, the petitioner had given reply on 04.08.2021, which has not been considered while passing the impugned Assessment Order.

5. That apart, it is submitted that the first respondent had issued a Show Cause Notice on 31.08.2021 under Section 144 of the IT Act.

6. This writ petition is opposed by the learned Senior Standing Counsel for the respondents on the ground that not only the Draft Assessment Order was passed but also the Show Cause Notice was issued, to which, the petitioner has failed to reply.

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

8. The procedure under Section 144B of the IT Act is structured. It contemplates different stages of assessment and eventualities where, returns are filed or where returns are not filed and replies filed or not filed. At each stage, the matter has to go to the Assessment Unit and the Draft Assessment Order has to be passed.

9. In this case, the Department has combined the Show Cause Notice as is contemplated under Section 144B(11) with the procedure under Section 144(1)(xiv) of the IT Act.

10. The proceedings cannot be short circuited particularly when the provisions are categorical notwithstanding the fact that the petitioner may have failed to reply to some of the notices that were issued under Section 142(1) of the IT Act or there was a failure on the part of the petitioner to file the returns immediately after a notice under Section 148 of the IT Act issued on 23.03.2020.

11. Be that as it may, the matter is that the impugned Assessment Order has been passed directly without issuance of a Draft Assessment

Order. Combining of the Draft Assessment Order and the Show Cause Notice is not permissible under the provisions of the IT Act.

12. Considering the above, the impugned Assessment Order is set aside and the case is remitted back to the respondents to refer the matter to the Assessment Unit to pass a Draft Assessment Order within a period of three months from the date of receipt of a copy of this order.

13. The petitioner shall upload all the informations which have not been uploaded so far within a period of thirty days from the date of receipt of a copy of this order.

14. The respondents shall make suitable provisions for allowing the petitioner to upload the information within a period of thirty days as directed above.

15. The petitioner's return which was belatedly filed on 01.09.2021 shall also be allowed to be uploaded. However, it is made clear the issue has to be decided independently based on the procedure as it stands today.

16. This Writ Petition stands disposed of with the above observations.

No costs. Connected Writ Miscellaneous Petitions are closed.

05.09.2023

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

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C.SARAVANAN, J.

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