IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2023

CORAM

THE HON'BLE **MR.JUSTICE C.SARAVANAN**

W.P.No.25777 of 2022

PV.Gunasekaran ... Petitioner

Vs.

1.Additional/Joint Deputy/
Assistant Commissioner of Income Tax/
Income Tax Officer,
National Faceless Assessment Centre,
Delhi.

2.The Income Tax Officer,
Ward 1 Tiruvallur,
Income Tax Office,
No.2, 1st Floor, Jawaharlal Nehru Road,
Tiruvallur, Tamil Nadu 602 001. ... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorari, calling for the records contained in notice dated 19.03.2021 bearing ITBA/AST/S/148/2020-21/1031618196(1) issued by the 2nd respondent under Section 148 of the Income Tax Act, 1961 for AY 2017-18 for PAN:AAAFN4271G and all consequential notices, letters and orders thereto, including order dated 26.03.2022 bearing

ITBA/AST/S/147/2021-22/1041701959(1) issued by the 1st respondent and to quash the same.

For Petitioner : Mr.r.Suhrith

For Respondents : Mr.Prabhu Mukunth
Arun Kumar &
Mr.B.Ramana Kumar
Senior Panel Counsel

ORDER

The petitioner is aggrieved by the impugned order dated 26.03.2022 bearing ITBA/AST/S/147/2021-22/1041701959(1) issued by the 1st respondent and the impugned notice dated 19.03.2021 bearing ITBA/AST/S/148/2020-21/1031618196(1) issued by the 2nd respondent under Section 148 of the Income Tax Act, 1961 for AY 2017-18 for PAN:AAAFN4271G.

2. Relevant portion of the impugned order reads as under:-

> 2. The assessee failed to file I.T Return for the AY 2017-18. In this case, the information available in ITBA database(NMS) assessee has made investment by purchase of time deposit to the tune of Rs.14,00,000/- cash deposits of Rs.1,63,91,100/- and

interest income of Rs.1,65,057/- in F.Y.2-2016-17 but failed to file the return of income declaring the above transaction for the AY 2017-18. The quantum of Rs.1,79,56,157/- is escaped assessment for the A.Y 2017-18. Subsequently, the case was reopened u/s.147 of the Income Tax Act and notice u/s 148 dated 19.03.2021 was issued and served. But there was no record of filing return of income u/s.148 of the I.T Act in the e-filing portal.

The penalty proceedings u/271F of the I.,T. Act is initiated separately for non-filing of return of income.

Thereafter, notice u/.142(1) of the I.T.Act, 1961 dated 20.09.2021 and 31.01.2022 were issued and served upon the assessee through e-mail. But the assessee did not complied with non of the notices. Again another letter dated 08.03.2022 was issued to the assessee with a request to furnish relevant submission as per the previous notices and also mentioned that in case of further failure to comply the assessment will be completed as best judgment assessment u/s.144 of the I.T.Act. Again the assessee failed to comply.

The Penalty proceedings u/s.272A(i)(d) of the I.T.Act is initiated separately for non compliance.

Therefore, it can be resonate that there is no evidence against the information of concealed income of Rs.1,79,56,157/- by the assessee and the same is added u/s 69A r/w Section 115BBE to the total income and penalty proceedings u/s 271 AAC of the I.T. Act is initiated separately for under reporting of income in consequence to misreporting.

Considering the above, the total income is re-computed as

under:-

Addition (Discussed above) Rs.1,79,56,157/-

Assessed income Rs.1,79,56,157/-

Assessed u/s.144, 147 r/w Section 143(3A) & 143(3A) & 143(3B) of the Act, as above at Rs.1,79,56,157/- Tax on assessed income is computed as per separate sheet is an integral part of this order. Copy of order, demand notice and notice u/s.272A(1)(d)and 271AAC of the I.T.Act, 1961 are issued to the assessee.

3. The petitioner claims to be a partner of Nirmala Manure Stores which was engaged in the business of dealing with fertilizers. According to the petitioner, the said partnership firm was constituted in the year 1972 with two partners namely, petitioner and petitioner's father. The petitioner's father died on 18.01.2012 and thus the partnership stood dissolved on the same day by operation of law.

4. It is the specific case of the petitioner that the petitioner had intimated about the death of the petitioner's father, in his response dated 22.03.2022 to show cause notice dated 19.03.2022 issued under Section 144 of the Income Tax Act,1961. The first respondent has however passed the impugned order without considering the reply.

5. That apart, it is submitted that after the death of the petitioner's

father, petitioner has carried on business of the firm in his individual capacity and that the petitioner was being independently assessed to income tax with his PAN No.AAIPG8037B. It is therefore submitted that the impugned order that passed by invoking Section 141 and r/w 144 and 144(b) of the Income Tax Act on 26.03.2022 was liable to be quashed.

6. Defending the impugned order, the learned Senior Standing Counsel for the respondents would submit a notice dated 31.01.2022 was issued under Section 142(1) of the Income Tax Act, 1961. The said notice was followed by a show cause notice dated 19.01.2022 to which the petitioner has only replied. It is submitted that the petitioner had however did not respond to notice issued under Section 142(1) of the Income Tax Act on 31.01.2022.

7. It is further submitted that it was incumbent on the part of the petitioner, to have complied with the requirements of Section 176(3) of the Income Tax Act, 1961.

8. That apart, it is submitted that even in the reply, the petitioner has

not given the particulars of the account details of the partnership firm and information was gathered by the Income Tax Department in ITBA database (NMS) as per which the assessee has made investment by purchase of time deposits to the tune of Rs.14,00,000/-, had made cash deposits of Rs.1,63,91,100/- and had earned interest income of Rs.1,65,057/- during the Financial year 2016-17 and thus a clear was case made out that income had escaped assessment for a sum of Rs.1,79,56,157/-during Assessment Year 2017-18.

9. That apart, it is submitted no returns of income was also filed under Section 139 of the Income Tax Act and therefore the impugned order was passed. It is therefore submitted that the impugned order does not call for any interference.

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

11. No doubt there is a failure on the part of the petitioner to have complied with the requirements of Section 176 of the Income Tax Act, 1961

after partnership firm purportedly ceased to exist and discontinued with the business. There is also a failure on the part of the petitioner to give in the details of the account Nos. of the partnership firm while responding to the show cause notice issued under Section 147 of the Act, vide reply dated 22.03.2022. However, the impugned order is bereft of details.

12. Before confirming the taxable income and the tax due, it was incumbent for the respondent to have given detailed reasons. It merely states that quantum of Rs.1,79,56,157/- had escaped assessment for the Assessment Year 2017-18 and find faults with the petitioner for not giving proper details.

13. Considering the above, the impugned order is set aside and the case is remitted back to the first respondent to pass a fresh order on merits as expeditiously as possible. The petitioner shall file additional reply/representation if any and upload the same together with the bank details/documents that have been in use after the petitioner's father's death.

14. The petitioner shall also furnish the details of the assessment and documents filed for assessment of his individual income for the relevant assessment years. This exercise shall be carried out by the petitioner within

four weeks from the date of receipt of this order or within such time as may be given or extended by the first respondent.

15. The first respondent shall thereafter endeavour to pass a fresh order on merits and in accordance with law after considering such representation, if any, that may be filed by the petitioner. The petitioner shall be heard in accordance with the procedure prescribed under Section 144B of the Income Tax Act, 1961.

16. This writ petition stands disposed with the above observation. No costs. Consequently, connected miscellaneous petitions are closed.

08.08..2023

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

1.The Additional/Joint Deputy/
Assistant Commissioner of Income Tax/

Income Tax Officer,
National Faceless Assessment Centre,
Delhi.

2.The Income Tax Officer,
Ward 1 Tiruvallur,
Income Tax Office,
No.2, 1st Floor, Jawaharlal Nehru Road,
Tiruvallur, Tamil Nadu 602 001

C.SARAVANAN, J.

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