IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.26706 of 2023
and
W.M.P.Nos.26140 and 26142 of 2023

Shravan Mani ... Petitioner

Vs.

1.The Assistant Commissioner of Income Tax,
Assessment Unit, Income Tax Department,
Delhi.

2.The Income Tax Officer, Ward 1 & TPS,
Hospet, Karnataka. ... 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 of the respondents in DIN and Order No.ITBA/AST/S/147/2022-2023/1051106336(1) relating to the Assessment Order passed under Section 147 read with Section 144 read with Section 144B of the Income Tax Act, 1961 dated 22.03.2023 for the Assessment Year 2015-2016 in PAN : AQBPM7590C and quash the same.

For Petitioner : Mr.T.Vasudevan

For Respondents :
For R1 : Mr.Prabhu Mukunth Arun Kumar
Junior Standing Counsel

ORDER

Mr.Prabhu Mukunth Arunkumar, learned Junior Standing Counsel takes notice on behalf of the first respondent.

2. The petitioner has challenged the impugned Assessment Order in DIN No.ITBA/AST/S/147/2022-2023/1051106336(1) dated 22.03.2023 passed by the first respondent under Section 147 read with Section 144 read with Section 144B of the Income Tax Act, 1961 (hereinafter referred to as the IT Act).

3. The impugned Assessment Order precedes the notices dated 06.10.2022 and 20.10.2022 issued under Section 142(1) of the IT Act.

4. The impugned Assessment Order also precedes a notice dated 30.03.2022 issued under Section 148A(b) of the IT Act followed by an order dated 30.03.2022, passed under Section 148A(d) of the IT Act.

5. The specific case of the petitioner is that the petitioner is a Non-Resident Indian (NRI) and he is residing outside the country from 2012. It is further submitted that the petitioner had obtained PAN Card when he was employed with M/s.Jindal Steels in Toranagallu, Bellary District, Karnataka State way back in 2009. At the time when the PAN Card was applied, Indore address was given by the petitioner. Later, the petitioner had changed the address to Hospet, Karnataka to work in M/s.Jindal Steels in Toranagallu, Bellary District, Karnataka State.

6. The specific case of the petitioner is that the petitioner is currently a NRI and had left the country in 2012. It is submitted that the respondents have issued the above mentioned notices and have confirmed the proposals in the impugned Assessment Order by serving notices in the address available in PAN, Database of the petitioner, in accordance with Rule 127(2) of the Income Tax Rules, 1962. It is further submitted that the petitioner has merely credited amounts lying in his account and the amounts cannot be taxed.

7. That apart, it is submitted that the petitioner cannot be driven to Hospet, Karnataka, merely because the petitioner was employed at a particular point of time in Toranagallu, Bellary District. It is further submitted that the order has been passed in gross violation of the principles of natural justice as the petitioner had no information regarding the notices and orders that have been passed earlier.

8. The learned counsel for the petitioner has further drawn attention to paragraph 64 of the typed set of papers, wherein, the petitioner has made changes in the personal details of the addressee in the PAN Card, Database etc, maintained by the respondents. It is further submitted that the petitioner may be given one chance to explain the case afresh before the first respondent.

9. The learned Junior Standing Counsel for the respondents would submit that the writ petition is devoid of merits.

10. That apart, it is submitted that the writ petition is liable to be dismissed on account of jurisdiction.

11. It is submitted that the jurisdictional Assessing Officer is the Income Tax Officer in Hospet, Karnataka, namely, the second respondent herein and therefore, the petitioner can be relegated to work out his remedy either before the Appellate Authority in Karnataka or before the Karnataka High Court.

12. It is further submitted that the petitioner is not the resident of Tamil Nadu and therefore, even on this count also, this Writ Petition is liable to be dismissed.

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

14. The petitioner has no other connection with Karnataka State barring a brief stay in Karnataka between 2010 and 2012, when he was employed in Toranagallu, Bellary District. After 2012, till date, the petitioner is a NRI, working in Bahrain, Oman and Turkey.

15. Although the respondents cannot be faulted for passing the impugned Assessment Order, as the notices have been issued in accordance with Rule 127(2) of the Income Tax Rules, 1962, the fact remains that the impugned Assessment Order has been passed by the first respondent from New Delhi.

16. Considering the fact that the impugned Assessment Order has been passed without the petitioner being served with various notices that preceded the impugned Assessment Order, this Court is inclined to interfere with the impugned Assessment Order.

17. Therefore, I am of the view that this is a fit case for exercising discretion under Article 226 of the Constitution of India in favour of the petitioner by quashing the impugned Assessment Order.

18. Accordingly, the impugned Assessment Order is quashed and the matter is remitted back to the first respondent to pass a fresh order on merits within a period of six weeks from the date of receipt of a copy of this order.

19. The second respondent is directed to transmit all the papers to the jurisdictional Income Tax Officer in Bellary District, Karnataka, in view of the migration by the petitioner on 26th June 2023.

20. This Writ Petition stands allowed with the above observations. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

14.09.2023

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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To

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