IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **20.11.2023**

CORAM:

THE HON'BLE MR. JUSTICE KRISHNAN RAMASAMY

WP Nos.27649 & 27653 of 2021
WMP Nos.29189, 29191, 29198 & 29199 of 2021

Kamal Basha Suban ... Petitioner in both WPs

vs.

1. The Principal Commissioner of Income Tax
Nungambakkam High Road,
Chennai – 600 008.

2. The Assistant Commissioner of Income Tax
Non-Corporate Circle – 11(I)
Chennai. ... Respondents in both WPs

Prayer in WP No.27649 of 2021 : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records of the first respondent in his proceedings in DIN & Order No.ITBA/REV/F/REV7/2021-22/1036720835 (I), quash the order dated 03.11.2021 passed therein.

Prayer in WP No.27653 of 2021 : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records of the second respondent in his proceedings in No.ITBA/REC/S/154_1/2021-22/1036788903 (I), quash the order dated 09.11.2021 passed therein.

In both WPs

For Petitioner	:	Mr.R.L.Ramani Senior Counsel for Mr.B.Raveendran
For Respondent	:	Dr.B.Ramaswamy, Senior Standing Counsel

COMMON ORDER

Writ Petition No.27649 of 2021 has been filed challenging the impugned order passed by the first respondent vide his proceedings in DIN & Order No.ITBA/REV/F/REV7/2021-22/1036720835 (1) dated 03.11.2021 in the revision application filed by the petitioner under Section 264 of the Income Tax Act.

2. Writ Petition No.27653 of 2021 has been filed challenging the order of rejection of rectification application, dated 09.11.2021 passed by the second respondent vide his proceedings in No.ITBA/REC/S/154-1/2021-22/1036788903 (I), filed by the petitioner.

3. The issue in the present two writ petitions are pertaining to the Assessment Year 2017 – 18.

4. According to the learned Senior Counsel appearing for the petitioner, the assessee/petitioner had rental income to an extent of Rs.1,38,00,000/-. He has shown the said rental income in his returns under two heads, i.e. one under the heading “Business Income” and another under the heading “Income from House Property”. Therefore, the income earned by the petitioner has been shown under two heads, so the same was assessed twice and accordingly the income tax was paid double the amount of actual tax. The Income Tax Returns were filed in such a manner by showing the rental income as income under two heads and the assessment order came to be passed on 31.12.2019. Subsequently, the petitioner noticed this defect and thereafter filed an application for rectification before the Assessing Officer on 03.01.2020. The said application was rejected by the Assessing Officer, by virtue of order dated 22.10.2020.

5. Again, on oral request made by the petitioner, the matter was heard and the Assessing Officer re-considered the request of the petitioner and allowed the rectification application, by virtue of an order dated 25.10.2021. Thereafter, once again, the Assessing Officer

interfered and rejected the rectification application filed by the petitioner, by virtue of order dated 09.11.2021. This order is under challenge before this Court in WP No.27653 of 2021.

6. The petitioner also filed a revision application under Section 264 of Income Tax Act, 1961 and the same came to be dismissed by the first respondent, by virtue of order dated 03.11.2021. The said impugned order was challenged before this Court in W.P.No.27649 of 2021.

7. The learned Senior Counsel appearing for the petitioner would submit that the respondent is empowered to rectify even the Income Tax Returns, if anything is wrongly filed by the petitioner. In this regard, he would refer to a judgment dated 09.09.2002 passed by the Division Bench of this Court in the case of ***Annamallais Agencies v. Commissioner of Income Tax*** reported in ***MANU/TN/2650/2002,*** wherein it has been held as follows -

> *10. The record for this purpose does not merely mean the assessment order. The return, the things which accompanied the return are also part of the record and if there has been omission on the part of the Assessing Officer to take note of the contents of that record, while making his order, the mistake in the assessment can be regarded as apparent.*

8. On the other hand, the learned Senior Standing Counsel

appearing for the respondents would contend that since both the rectification order as well as the revision order passed by the appropriate authorities, are in accordance with law and unless the Income Tax Return is rectified, the Assessment Office cannot entertain the rectification application. The Assessing Officer cannot make any rectification in the Income Tax Returns unless and otherwise, if any revised returns or rectification of the returns to rectify the order is filed by the petitioner.

9. In reply, by referring to the above said judgment, the learned Senior Counsel appearing for the petitioner contended that the Assessing Officer can make any rectification even in the Income Tax Returns. He further submitted that unless and otherwise, appropriate orders are passed, the petitioner would be prejudiced. It is only an apparent error, crept in, on the records of filing the Income Tax Returns.

10. Heard the learned Senior Counsel appearing for the petitioner as well as the learned Senior Standing Counsel appearing for the respondents and perused the materials available on record.

11. Upon hearing the submissions made by the learned Senior Counsel appearing for the petitioner as well as the learned Senior Standing Counsel appearing for the respondents, I am in complete agreement with the submissions made by the learned Senior Standing Counsel appearing for the respondent.

12. A reading of the Division Bench judgment referred to by the learned Senior Counsel for the petitioner would go to show that in the event, if the Assessing Officer has not taken anything into consideration which are mentioned in the returns, in such cases, the rectification can be carried out. It is not that in the returns, if something is wrongly mentioned, the Assessing Officer can make correction and pass orders.

13. In the above circumstances, this court is of the view that the Assessing Officer is justified in rejecting the rectification application and also the revision petition which requires no interference.

14. Now the issue is that the assessee / petitioner has committed an error in filing the returns and by virtue of the said error, the assessee

has shown the income under two heads and thereby his income was taxed twice under two heads and this error is apparent on the Income Tax return. The said fact was admitted by the respondent and even the learned Senior Standing Counsel appearing for the respondent submitted that it is a mistake purely on the part of the petitioner.

15. Under these circumstances and ultimately justice has to be rendered as nobody's income has to be taxed twice. Only re-course available in this case is by filing the revised Income Tax Returns, which is available under Section 139 (5) of the Income Tax Act, 1961. However the petitioner has not chosen to file the same in time. He has to file the revised returns instead, he had filed the application for rectification before the second respondent, revision petition before the first respondent and two writ petitions before this Court. Because of the wrong guidance and ill advise, the petitioner should not be penalised.

16. Considering the facts and circumstances of this case, this Court is inclined to grant permission to the petitioner/assessee to file the revised return, within 15 days from the date of receipt of a copy of this order. Upon filing of the revised returns by the petitioner, the Assessing

Officer shall process the returns in accordance with law. Once new assessment order is passed by the authorities concerned, both the impugned orders shall automatically become infructuous. It is made clear that if the petitioner fails to file the revised returns within 15 days from the date of receipt of a copy of this order, the impugned orders shall automatically come to force.

17. With the above observation, both the writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

20.11.2023

Index: Yes/No
Speaking/Non-Speaking Order
Neutral Citation: Yes/No.
rgr

To

1. The Principal Commissioner of Income Tax
Nungambakkam High Road,
Chennai – 600 008.

2. The Assistant Commissioner of Income Tax
Non-Corporate Circle – 11(I)
Chennai.

KRISHNAN RAMASAMY, J.

rgr

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