IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.09.2023

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.27247 of 2023
and
W.M.P.Nos.26673 and 26675 of 2023

M/s.Erode District Tractor Owners Association,
Represented by its President,
Mr.C.Palanisamy,
138, Nagarajapuram, Arachalur,
Erode – 638 101. ... Petitioner

Vs.

1.The Principal Commissioner of Income Tax (PCIT),
Coimbatore – 1.

2.The Assistant Commissioner of Income Tax,
Circle – 1,
Erode.

3.The Commissioner of Income Tax,
O/o The Additional Commissioner of Income Tax,
Erode Range,
Erode. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for record the impugned order in ITBA/REV/F/REV7/2023-24/1053830805(1) dated

21.06.2023 passed by the first respondent and quash the same as passed without granting reasonable opportunity to the petitioner and further direct the first respondent to pass fresh orders in accordance with law after granting personal hearing to the petitioner.

For Petitioner : Mr.Rajkumar

For Respondents : Mr.R.S.Balaji
Senior Standing Counsel

ORDER

Mr.R.S.Balaji, learned Senior Standing Counsel takes notice on behalf of the respondents.

2.The petitioner has challenged the impugned order passed by the first respondent herein under Section 264 of the Income Tax Act, 1961. The aforesaid order has been passed by the first respondent in a revision application filed by the petitioner under Section 264 of the Income Tax Act. The impugned order is challenged primarily on the ground that the petitioner was not heard before the impugned order was passed.

3.That apart, the learned counsel for the petitioner submits that the petitioner is a society registered under the provisions of the Tamil Nadu Societies Registration Act, 1975. It is submitted that while filing the return, the petitioner had by made mistake given the status of the petitioner as of Association of Person(AOP)/Body of Individual(BOI). As a result of which, the petitioner has been taxed at 30% instead of 10% as applicable in the case of Societies registered under the provisions of the Tamil Nadu Societies Registration Act, 1975.

4.It is submitted that the impugned order has been passed without furnishing copies of report dated 20.02.2023 of the second respondent and report dated 23.02.2023 of the third respondent and without an opportunity of being heard.

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

6.Prima facie, it appears that the impugned order suffers non application of mind in as much as the first respondent has merely confirms the view expressed by the 2nd respondent/Assistant Commissioner in his report dated 20.02.2023 and views expressed by the 3rd respondent in his report dated 23.02.2023. That apart, the impugned order has been passed without hearing the petitioner in the application filed by the petitioner under Section 264 of the Income Tax Act, 1961.

7.Considering the above, the impugned order is set aside and the case is remitted back to the respondents to pass a fresh order on merits and in accordance with law. The petitioner has also filed an application filed under Section 154 of the Income Tax Act, 1961. The respondents shall therefore await for the disposal of application filed under Section 154 of the Income Tax Act, 1961 filed by the petitioner before the Jurisdictional Assessing Officer. The Jurisdictional Assessing Officer shall dispose the application filed under Section 154 of the Income Tax Act, 1961, by the petitioner within a period of six weeks from the date of receipt of a copy of this order. Thereafter, the first respondent may pass appropriate orders after the order is passed by the Jurisdictional Assessing Officer and considering the same.

8.Needless to state, before passing orders, the petitioner shall also be heard.

9.This writ petition stands allowed with the above observations. No costs. Consequently, connected writ miscellaneous petitions are closed.

25.09.2023

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

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Erode.

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O/o The Additional Commissioner of Income Tax,
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Erode.

C.SARAVANAN, J.

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