BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **24.03.2023**

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THE HONOURABLE Ms.JUSTICE **P.T.ASHA**

W.P.(MD) No.6466 of 2023
and
W.M.P.(MD) Nos.6107, 6108 and 6110 of 2023

Periyasamy Ramesh Rajah ... Petitioner

/vs./

1.The Additional Commissioner of Income Tax,
Central Range, Ground Floor,
Income Tax Office – Madurai ME,
Income Tax Staff Quarters Complex,
Kulamangalam Main Road,
Meenambalpuram,
Madurai, Tamil Nadu 625 002.

2.Commissioner of Income Tax (Appeal) -18,
Chennai -34. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling upon the records of the first respondent pursuant to the show cause notices dated 13.03.2023 issued by the first respondent in DIN and Notice No.ITBA/COM/F/17/2022-23/1050703795(1) and DIN and Notice No.ITBA/COM/F/17/2022-23/1050703443(1) and quash the same and consequently direct the first respondent to drop the penalty proceedings pending disposal of the appeal filed by the petitioner before the second respondent.

For Petitioner : Mr.PJ.Rishikesh

For Respondents : Mr.N.Dilip Kumar
Standing Counsel

ORDER

The petitioner has invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India for issue of Writ of Certiorarified Mandamus calling for the records of the first respondent pursuant to the show cause notices dated 13.03.2023 in DIN and Notice No.ITBA/COM/F/17/2022-23/1050703795(1) and DIN and Notice No.ITBA/COM/F/17/2022-23/1050703443(1), quashing the same and directing the first respondent to drop the penalty proceeding pending disposal of the appeal by the petitioner before the second respondent.

2.The impugned order dated 13.03.2023 in respect of the two accounts both for the assessment year 2017-2018 is in the line of a show cause notice issued to the petitioner seeking his explanation as to why under Sections 41 and 43 of the

Block Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, *(herein after referred to as Act),* penalty of Rs.7,02,48,420/- and Rs. 10,00,000/- respectively should not be levied and informing the petitioner that personal hearing has been provided, where he could appear either virtually or in person by himself or by authorized representatives on or before 20.03.2023. The notice would also indicate that despite giving sufficient time, the petitioner herein had not responded and in order to avoid the proceedings getting time barred, last opportunity was being given to the assessee, namely the petitioner to give his explanation.

3.The facts briefly preceding the issue of this show cause notices are herein below alluded to.

4.It is the case of the petitioner that the Officials of the Income Tax Department (Inv.,) had sought information under Section 10 (1) of the Act through their letter dated 12.11.2020. The petitioner had immediately offered his explanation and made sincere attempts to answer the queries and disclosed all the information available with him. The petitioner would submit that he did not have any personal knowledge about the alleged investments and was ignorant of the bank account details. He had submitted that the amounts could have been made by his late father and that he was taking steps to contact his father's chartered accountant. However, the petitioner came to understand that this gentleman was no more and his colleagues were unaware about his dealings with the petitioner's late father.

5.The petitioner would also submit that there was no intention to defraud the Department by not disclosing the investments, since he did not have any information about the same. He would submit that his father had been a regular tax payer and had paid the tax right up to the year 2003-2004 ie., till his death. The petitioner would also submit that despite his best efforts, he was not able to trace out the files pertaining to these foreign investments. However, despite giving this explanation and appreciating his *bona fides*, the Income Tax Department had proceeded to pass an assessment order dated 30.03.2022 demanding tax of Rs.3,86,06,160/- for the assessment year 2017-2018. This very same Assessing Officer had given a Nil order for the assessment year 2016-2017. This was followed by a notice under Section 46 of the Act to show cause as to why the penalty should not be imposed upon the petitioner under Sections 41 and 42 of the Act.

6.The petitioner would submit that aggrieved by the assessment order, he has already preferred an appeal under Section 15 of the Act. While the petitioner had challenged the assessment order, he had received two notices dated 13.03.2023 (the impugned notices), which is the subject matter of challenge.

7.It is the case of the petitioner that these notices by itself were totally unwarranted, as the appeal proceeding was pending before the appellate authority, namely the second respondent herein. Further, immediately on receipt of the said notice, the petitioner had issued the reply asking the authority to defer the penalty proceedings, as the appeal filed by him was pending. However, the language of the impugned notices shows that since the Act mandates completion of penalty proceeding within a year ie., before 31.03.2023, there is every likelihood of the respondents imposing the penalty on the petitioner.

8.Mr.PJ.Rishikesh, learned counsel for the petitioner would submit that the impugned orders have been passed totally disregarding the reply of the petitioner dated 16.04.2022, wherein he has requested the authorities to defer all the penalty proceeding till the disposal of the appeal before the appellate authority. In fact, in the letter, he had requested the Assistant Director of Income Tax (Inv.,) to adjourn the proceedings to a different date or to defer the proceedings or to drop the proceedings till the disposal of the appeal. To this letter, there was no response and without even informing the petitioner as to whether they had deferred the proceedings or whether they had dropped or adjourned the proceedings, the petitioner has been slapped with the impugned notices. He would submit that in response to the impugned notices, the petitioner has stated that he was ready to permit the respondents to appropriate the above amounts towards the demanded tax dues.

9.He would also submit that the only reason, which has prompted the issue of the impugned show cause notices, is to complete the penalty proceedings and nothing else. He would, therefore, submit that since the appeal is pending, these proceedings can be deferred or dropped.

10.*Per contra*, Mr.N.Dilipkumar, learned Standing Counsel for the respondents would submit that the ignorance feigned by the petitioner is totally misplaced. In fact, the amounts in question had come to the account of the petitioner and the petitioner was very much aware about the source of the said income, particularly when the data would indicate that the person depositing the amount was also in the know-how of the permanent account details of the petitioner. He would submit that the petitioner, after the impugned notices, has sent a reply running to pages questioning the show cause notices. Such a reply has not been made to the original notice under Section 46 of the Act dated 30.03.2022. On the contrary, the only response was to defer or drop the proceedings. He would further argue that considering the fact that the petitioner has sent a detailed response to the impugned notices, the petitioner may appear and show cause before the authority concerned.

11.Mr.PJ.Rishikesh, learned counsel for the petitioner would submit that if the Court is inclined to direct the petitioner to appear to answer the show cause notices, then the payment of the penalty may be deferred till the disposal of the appeal.

12.After hearing the arguments on either side and considering the fact that the petitioner has responded in great detail to the impugned notices, the interest of justice would be subserved if the Writ Petition is disposed of with the following directions:-

i) The petitioner shall appear before the respondent concerned on 27.03.2023 at 10.30 am., and make his submissions.

ii) The respondents shall thereafter pass appropriate orders on the same. Till such time the orders are pronounced, no coercive steps shall be initiated by the respondents.

13.In the result, the Writ Petition is disposed of. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

24.03.2023

Speaking : Yes / No
NCC : Yes / No
Internet : Yes / No
Index : Yes / No

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Note : Issue order copy on 27.03.2023.

P.T.ASHA, J.

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W.P.(MD) No.6466 of 2023

24.03.2023