BEFORE THE MADURAI BENCH OF MAD0RAS HIGH COURT

DATED: 10.07.2023

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P.(MD)Nos.8320 and 16577 of 2023
and
W.M.P.(MD)Nos.7662 to 7664, 13854,
13865 and 13866 of 2023

D.S.Xavier Rajasekaran ... Petitioner in both writ petitions

vs.

Income Tax Officer,
Ward-1, Theni. ... Respondent in both writ petitions

PRAYER in W.P.(MD)No.8320 of 2023: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records pertaining to the impugned notice, dated 06.03.2023, passed for the assessment year 2018-19, vide DIN: ITBA / PNL / S / 271AAC(1) /2022-23/ 1050428150 (1) passed by the respondent and to quash the same.

PRAYER in W.P.(MD)No.16577 of 2023: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records pertaining to the impugned assessment order, dated 06.03.2023, for the assessment year 2018-19, vide DIN: ITBA /AST /S/ 147 /2022-23/ 1050428070 (1) passed by the respondent and to quash the same.

In both writ petitions:

For Petitioner : Mr.T.N.Rajagopalan
For Respondent : Mr.N.Dilip Kumar

*****

COMMON ORDER

The writ petition in W.P.(MD)No.16577 of 2023 is filed challenging the assessment order for the assessment year 2018-2019, dated 06.03.2023.

2. The petitioner is not an assessee. All these years, the petitioner has not filed any returns. On scrutinizing the petitioner's Bank account, the respondent found Rs.55,00,000/- is deposited in the bank account. Thereafter, the respondent issued a notice under 148. The respondent has issued 142(1) notice on 04.01.2023 and again on 19.01.2023. Thereafter, 133(6) on 20.01.2023. Thereafter, issued another letter, dated 11.01.2023 and also a show cause notice was issued. However, the petitioner has not responded to any of these notices. Hence, the respondent proceeded to pass the assessment order based on the Best Judgment Assessment. Subsequently, the respondent has issued notice on 06.03.2023 for initiating penal proceedings under Section 271 AAC (1) of the Income Tax Act, 1961. The said notice was issued to the petitioner through SMS. On receipt of such notice, the petitioner came to know that an assessment

order has been passed against the petitioner. Immediately, the petitioner approached this Court by filing W.P.(MD)No.8320 of 2023. At the time of admission, this Court has granted an interim order on 13.04.2023 and subsequently, it has been extended periodically.

3. The respondent has filed counter affidavit along with typed set of papers in which the respondent has annexed the assessment order. Based on the copy of the assessment order, the petitioner has filed W.P. (MD)No.16577 of 2023, challenging the assessment order before this Court.

4. The learned Counsel appearing for the respondent vehemently opposed stating that the petitioner was granted several opportunities and the petitioner has not utilized the same. In fact, all the notices were

issued to the registered e-mail. In addition, they have issued notices through speed post to the petitioner. The Learned Counsel also submitted that in the first writ petition, the petitioner has not pleaded any health issues. For the first time, the petitioner has disclosed the health issues in the second writ petition only. Since all the procedures are followed by the respondent, the petitioner cannot challenge the assessment order. When the statutory appeal is provided to the petitioner, he has to approach the appellant authority by filing appeal.

5. The learned Counsel appearing for the petitioner elaborately narrated the health issues of the petitioner. The petitioner was diagnosed of parkinsonism-Tremor predominant with chronic liver disease. Then the petitioner was diagnosed with Kidney Cancer and underwent Lap Partial Nephrectomy on 13.08.2019. In the year 2021, and he was

infected with COVID–19 Pneumonia. Therefore, there were series of health issues which the petitioner was undergoing. It is also seen from the summary report that the petitioner is confined to the bed for few days.

6. Therefore, this Court is inclined to grant one more opportunity to the petitioner. Hence, the impugned assessment order is set aside. The respondent is directed to re-do the assessment after giving opportunity to the petitioner. The petitioner shall not claim any adjournment. The respondent has issued notice and a draft assessment order on 02.02.2023. The petitioner shall submit an explanation and objections to the draft assessment order. The petitioner is also entitled to submit all the documents while submitting the explanation. Since it is faceless assessment, the petitioner shall avail the option in the portal for

personal hearing as well. The petitioner shall submit the explanation and objections within a period of three weeks from the date of receipt of a copy of this order. Thereafter, the respondent shall pass appropriate orders after giving sufficient opportunity.

7. With the above said observation, the writ petition W.P.(MD)No. 8320 of 2023 is closed and W.P.(MD)No.16577 of 2023 is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

10.07.2023

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

Tmg

S.SRIMATHY, J

Tmg

W.P.(MD)Nos.8320 and 16577 of 2023

10.07.2023