BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.07.2023

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

W.P.(MD)No.10628 of 2023
and
W.M.P.(MD)No.9403 of 2023

S.Muthammal ... Petitioner

vs.

1.Assessment Unit,
Income Tax Department.

2.Assistant Commissioner of Income Tax,
Non Corporation Circle 2, MDU,
No.2, V P Rathinasamy Nadar Road,
Cr Building, Bibikulam,
Madurai-625 002. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records on the file of the respondents in PAN:ATJPS3829D and to quash the impugned order under section 147 read with section 144 B in ITBA/ AST/ S/ 147/ 2022-23 / 1050979970 (1), dated 17.03.2023, passed by the 1st respondent for the academic year 2018-2019 as illegal and without jurisdiction.

For Petitioner : M/s.A.Nivedhitha
For Respondents : Mr.N.Dilip Kumar

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O R D E R

This writ petition is filed for writ of Certiorari, to quash the impugned order dated 17.03.2023 passed under section 147 read with section 144 B by the respondents in PAN:ATJPS3829D for the assessment year 2018-2019 as illegal and without jurisdiction.

2. The contention of the petitioner is that the impugned order is passed against the dead person. The fact of the death of the assessee is

known to the respondents which is evident from the assessment order and the relevant portion of the order is extracted here under:

> *"The assessee is already deceased on 27.03.2017 and this case is being represented by his legal heir, Smt. S Muthammal. In response to notice u/s 148 of the Act dated 30.03.2022. Smt. S Muthammal, Legal Heir, has filed assessee's return of income for AY 2018-19 on 01.03.2023 declaring total income of Rs. 5,71,740/-. Accordingly, notice u/s 143(2) of the Act was issued on 03.03.2023."*

3. The respondents have filed a counter affidavit stating that the petitioner (legal heir) has participated in the enquiry proceedings. It is also recorded in the impugned order that the assessment proceeding is represented by the legal heir namely, Muthammal. The petitioner submitted before the authorities that but there are other legal heirs as

well. But the respondents submitted that the petitioner has not furnished the address of the other legal heirs. Be that as it may, the respondents without issuing notice to the other legal heirs, has recorded the submission of the said Muthuammal and has passed an order. The other legal heirs are also liable to pay the tax from the estate of the deceased assessee and the respondents cannot claim the entire tax liability from Muthammal alone.

4. Therefore, this Court is inclined to set aside the assessment order. However, the respondents are at liberty to issue fresh notice to the legal heirs, call for objections and thereafter, pass an assessment order. The plea of limitation is available to the other legal heirs, but the same is not available to the petitioner.

5. With the above said observation, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No **14.07.2023**
Internet : Yes
NCC : Yes / No

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S.SRIMATHY, J

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