



W.P(MD).No.11230 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 04.05.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD)No.11230 of 2023

and

W.M.P(MD) Nos.9809 and 9810 of 2023

Prema Rengarajan

... Petitioner

-VS-

The Deputy Commissioner of Income Tax
Circle-1(1),
Trichy.

.... Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records of the respondent with regard to the impugned assessment order passed against the petitioner dated 31.03.2023 for the Assessment Year 2017-18 bearing DIN in Order No. ITBA/AST/S/143(3)/2022-23/1051799323(1) under Section 143(3) read with Section 263 of the Income Tax Act, and quash the same.

For Petitioner : Mr.Nithyaesh Natraj
for Anirudh A Sriram

For Respondent : Mr.N.Dilipkumar
Standing Counsel



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ORDER

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The present Writ Petition has been filed by the legal heirs of the original assessee, challenging the order dated 31.03.2023, passed under Section 143(3) of the Income Tax Act.

2. The assessment order was passed as against the original assessee on 21.12.2019, wherein, the return of income submitted by the said assessee was accepted and the entire proceedings were closed. However, aggrieved over the said closing of the assessment proceedings, a *suo moto* revision was taken up by the Principal Commissioner of Income Tax, PCIT, Madurai, and by an order dated 29.03.2022, it was reversed and the entire issue was remitted back to the original authority. The original authority, while he was conducting the enquiry, the assessee had passed away on 14.02.2023. The death of the original assessee was promptly informed by the legal heirs to the original authority on 24.02.2023. Thereafter, the original authority has chosen to issue notice to each one of the legal heirs on 24.03.2023, fixing the date of hearing as 28.03.2023. Since there was no response from the legal heirs of the original assessee, the present impugned order has been



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passed.
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3. The learned counsel appearing for the writ petitioner submitted that the impugned order has been passed as against the dead person and therefore, the order has to be set aside.

4. However, the learned Standing counsel appearing for the Department pointed out that after the death of the original assessee, separate notice has been issued to the legal heirs of the original assessee. Since they have not responded, the impugned order came to be passed.

5. Considering the fact that the original assessee has passed away on 14.02.2023 and notice of hearing was fixed on 28.03.2023, no ample opportunity was given to the legal heirs of the deceased assessee. Therefore, this Court is of the view that the order impugned in the writ petition is liable to be set aside and the matter should be remitted back to the original authority for affording due opportunity to the legal heirs of the original assessee to put forth their case.



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6. The learned counsel appearing for the petitioner brought to the notice of this Court an order in W.P(MD) No.5226 of 2022, dated 24.03.2022, (***J.Kishorekumar Vs. Income Tax Officer, Madurai***), wherein, this Court has taken a similar view and paragraph No.7 of the order is extracted as follows:

“7. Under these circumstances, I am inclined to allow this writ petition at the stage of admission by giving liberty to the respondent to issue appropriate notice to the petitioner under Section 148 as a legal representative of the deceased assessee, namely, Jeyachandran. The time spent in the impugned proceeding till the date of receipt of this order shall be excluded. Considering the fact that the time for completing the assessment would expire on 31.03.2022, the respondent is given liberty to issue a fresh notice to the petitioner within a period of two weeks from the date of receipt of a copy of the order. The respondent shall thereafter proceed to pass appropriate orders on merits and in accordance with law within a period of 75 days. The entire exercise shall be completed by the respondent within a period of 90 days from the date of receipt



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of copy of the order.”

7. The original authority is directed to dispose of the matter after giving due opportunity to both the parties within a period of 90 days from the date of receipt of a copy of this order. Accordingly, this Writ Petition stands allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

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Index : Yes / No
Internet : Yes / No
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To
The Deputy Commissioner of Income Tax
Circle-1(1),
Trichy.



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R.VIJAYAKUMAR,J.

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