BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.08.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.12766 of 2023
and
W.M.P.(MD)Nos.10759 and 10762 of 2023

Mariadoss ... Petitioner

Vs.

1.The Principal Commissioner of Income Tax,
PCIT, Madurai-1.

2.The Joint Commissioner of Income Tax,
Non-Corporate Range-1, Madurai.

3.The Income Tax Officer,
National Faceless Assessment Centre,
Delhi.

4.The Income Tax Officer,
Ward-1, Ramanathapuram.

5.Panchacharam

6.Kulanthai ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a ***Writ of Certiorarified Mandamus,*** to call for the entire records in relating to the impugned orders of the 1st respondent in C.No. 407/14/PCIT/MDU-1/[2021-22]/2022-23, dated 30.03.2023 and the impugned assessment order dated 15.09.2021 of the 3rd respondent and to quash the same and consequently, to direct the respondents 1 to 4 to take appropriate action as against the respondents 5 and 6.

For Petitioner	:	Mr.M.S.Jeyakarthik
For R-1 to 4	:	Mr.N.Dilip Kumar

ORDER

This writ petition is filed for writ of ***Certiorarified Mandamus,*** to quash the impugned orders, dated 30.03.2023 of the 1st respondent and the impugned assessment order dated 15.09.2021 of the 3rd respondent and consequently, to direct the respondents 1 to 4 to take appropriate action as against the respondents 5 and 6.

2. The petitioner is an agriculturist. The contention of the petitioner is that the 6th respondent is his relative and he earlier worked in Bajaj Insurance Company. At his instance, the petitioner obtained insurance policy in the year 2010, thereafter, he had certain transactions with the 6th respondent for which he has given his Aadhar card, PAN card, account passbook and photos. According to the petitioner, the 6th respondent has misused the same. The 3rd respondent has passed an assessment order, dated 15.09.2021, as if the petitioner has received some amount, thereafter, TDS was deducted and the petitioner has received TDS in his account. The said transaction was under the

purview of CBI and the CBI has taken cognizance of the said transactions.

3. The sum and substance of the petitioner's case is that based on this transaction, the official respondents have initiated assessment proceedings. The official respondents have issued notice during the assessment proceedings but the petitioner has not participated. Since it is a faceless assessment, the official respondents proceeded to pass an order.

4. On perusal of this order, it is seen that the official respondents have taken as if the petitioner is a registered Public Works Department (PWD) contractor and the petitioner has received Rs.17,66,140/- from the PWD and TDS of Rs.17,66,140/- was deducted as per the provisions of Section 194 C of the Income Tax Act. Even in the assessment order it has been further stated in the paragraph 4.4 that the petitioner is the registered contractor under PWD but the fact remains that the petitioner is not a registered contractor with the PWD at all. Therefore, there is an error in fact. Hence, the petitioner preferred a revision under Section 264. The petitioner had participated in the revision proceedings. In the revision proceedings, the authority has accepted the version of the petitioner that he is not a registered contractor and the same is evident in the order which is extracted hereunder:

"In view of the above, copy of the bank statement furnished by the applicant for the period from 04/02/2014 to 31/03/2016 was verified and it reveals that no contract payment from the Public Works Department, Trichy had been credited into the bank account during the financial year 2015-16. Though the explanation given by the petitioner appears to be correct i.e., the assessee might have been cheated by Shri S.Kulandhai and Shri Panchatcharam, the Revenue loss because of refund has not been indemnified so far. Moreover, during the assessment proceedings, the assessee has not made compliance to any statutory notices. The assessee did not furnish any information/document/explanation in respect of the issue."

5. The Revision Authority after perusing the report from the Assessing Officer, the Joint Commissioner, Non-Corporate Range-1, Madurai and the relevant records had held that the case is one of the refund scam. Also, recorded that one Mr.K.Panchatcharm has committed this fraudulent refund claim in many cases deliberately. The Revision Authority further held that the petitioner has also submitted in a sworn statement recorded on 27.08.2019, that the petitioner has assured to get back refund amount of Rs.1,81,470/- from Mr.K.Panchatcharm and return the same to the Department. But the assessee had not paid or returned the refund amount to the department till date as assured by the petitioner.

6. In the assessment order, the official respondents have further added the education cess, default in payment of advance tax and other interest and other levy as per law. When the petitioner has never received such an amount, imposition of all these amounts under the above said head is improper in law. The official respondents objected stating that the writ petition is not maintainable and the petitioner is having an alternative remedy. Since the official respondents have taken wrong facts, this Court is inclined to interfere.

7. Therefore, this Court is of the considered opinion that the revision authority has to reconsider the order. Therefore, this Court is remitting back the case to the 1st respondent who shall reconsider the case of the petitioner and pass a fresh order. However, petitioner has received Rs.1,81,470/- which the petitioner shall return to the department. On such return of money, the respondents shall reconsider the issue.

8. With the above said observation, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

16.08.2023

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

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S.SRIMATHY, J.

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