IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:**07.02.2024**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

Writ Petition No.712 of 2023
and W.M.P.No.648 of 2023

Vijayalakshmi Mohanakrishnan ... Petitioner

-vs-

1.The Assessment Unit/Verification Unit/
Technical Unit/Review Unit,
National Faceless Centre,
Income Tax Department,
Ministry of Finance,
Government of India,
New Delhi.

2.The Income Tax Officer,
Non-Corporate Ward 6(1)CHE,
Ayyakar Bhawan,
Nungambakkam High Road,
Chennai-600 034. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records of the 1st respondent in PAN No.CZSPM4471Q in DIN No.:ITBA/AST/S/143(3)/2022-2023/1048065469(1) dated 17.12.2022 and quash the same as illegal, arbitrary, without jurisdiction and against the principles of natural justice.

For Petitioner : Mr.K.Soundara rajan

For Respondents : Dr.B.Ramaswamy, Senior Standing Counsel

ORDER

The petitioner assails an assessment order dated 17.12.2022 on the ground of breach of principles of natural justice.

2. The petitioner states that she had filed the return of income for assessment year 2021-2022 on 24.08.2021 by disclosing the income earned from the sale of an ancestral property under the head "capital gains" by claiming a deduction under Section 54EC of the Income Tax Act, 1961 (the Income Tax Act). In relation thereto, the petitioner received a notice under Section 143(2) of the Income Tax Act on 28.06.2022 and a notice under Section 142(1) dated 24.08.2022. The later notice was replied to on 07.09.2022. A further notice under Section 142(1) dated 12.09.2022 was received by the petitioner and replied to on 06.10.2022. In those circumstances, it is stated that a show cause notice was issued by the respondents on 22.11.2022 calling upon the petitioner to show cause on or

before 29.11.2022. On account of the ill-health of the petitioner, it is stated that the show cause notice could not be replied to. In those circumstances, the order impugned herein was issued on 17.12.2022.

3. By referring to the show cause notice, learned counsel for the petitioner submits that the petitioner was provided barely seven days to respond thereto. He also points out that the petitioner was unwell at the relevant point of time by relying on the medical certificate dated 30.11.2022. On account of being denied a reasonable opportunity, learned counsel submits that significant tax liability was imposed on the petitioner although the petitioner has a good case on merits. On the merits, learned counsel for the petitioner submits that the petitioner inherited a parcel of immovable property. By dividing the property into three plots, the petitioner sold the property and disclosed the income derived from such sale. He further submits that the capital gains accruing from the sale was disclosed, exemption under Section 54EC of the Income Tax Act was availed, and the tax liability was discharged.

4. Dr.B.Ramaswamy, learned senior standing counsel, opposes the petition by pointing out that the petitioner was provided several opportunities to respond to the proposed variations. By referring to details of opportunities given in the table at internal page No.2 of the impugned order, learned senior standing counsel points out that about three notices were given prior to the show cause notice dated 22.11.2022. He also points out that in response to the notice under Section 142(1), only partial information was provided and that further information was only provided belatedly on 06.10.2022 in response to the notice dated 12.09.2022. In these circumstances, he submits that the assessee was negligent and is not entitled to indulgence in exercise of discretionary jurisdiction.

5. The documents on record disclose that the petitioner replied to the notice under Section 142(1) of the Income Tax Act, albeit the second notice was replied to with a short delay. The show cause notice reveals that the petitioner was called upon to respond thereto on or before 10.15 a.m. on 29.11.2022. It was no doubt possible for the petitioner to have requested for further time upon receipt of such show cause notice. Nonetheless, the fact

remains that the petitioner endeavored to submit a reply on 03.12.2022 but could not do so because the portal was not accessible by that time. As a result, the petitioner was unable to place on record submissions to support the contention that the income from sale of property was only liable to capital gains and that it should not be treated as business income. For that reason, the impugned order calls for interference subject to putting the petitioner on terms.

6. Therefore, the impugned order is quashed and the matter is remanded for reconsideration subject to the payment of Rs.10,000/- (Rupees Ten thousand only) as costs by the petitioner to the Adyar Cancer Institute, Chennai. Such payment shall be made within a maximum period of ten days from the date of receipt of a copy of this order. Subject to the above condition being fulfilled, after providing a reasonable opportunity to the petitioner, including a personal hearing, the 1st respondent is directed to issue a fresh assessment order within a maximum period of two months from the date of payment of costs.

7. The writ petition is disposed of on the above terms. There will be no order as to costs. Consequently, connected miscellaneous petition is closed.

07.02.2024

Index : Yes / No
Internet : Yes / No
Neutral Citation: Yes / No

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To

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SENTHILKUMAR RAMAMOORTHY,J

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