IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.10.2024

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.2810 of 2020
& W.M.P.No.3250 of 2020

B.Ramamoorthy

... Petitioner

Vs.

1.The Assessment Officer,
Ward 3, Vellore,
Income Tax Department,
Vellore-1

2.The Deputy Commissioner of Income Tax,
Income Tax Department,
Ministry of Finance, Government of India,
Central Wing, Central Circle 2(1),
No.46, Mahatma Gandhi Road,
Nungambakkam, Chennai 600 034.

... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the entire records pertaining to the Exparte best judgement assessment for the Assessment year 2012-13 under Section 144 of the Income Tax Act dated 31.12.2019 vide order No.ITBA/COM/F/17/2019-20/1023515818(1) on the file of the 2nd respondent and quash the same as arbitrary without jurisdiction in total violation of the Income Tax Act and against the principles of natural justice.

For Petitioner : Mr.P.C.Harikumar
for M/s.P.G.Harikumar and Associates

For Respondent : Mr.A.P.Srinivas,
Senior Standing counsel

ORDER

The challenge in this writ petition is with regard to the order dated 31.12.2019, passed by the 2nd respondent relating to the assessment year 2012-2013.

2. The learned counsel for the petitioner would submit that initially, this Court dismissed the writ petition in WP.No.2810 of 2020 vide order dated 13.09.2022, against which, the petitioner had preferred an appeal in W.A.No.2624 of 2022. However, the said appeal was dismissed by the Hon'ble Division Bench of this Court vide order dated

10.03.2023. While dismissing the writ appeal, the Hon'ble Division Bench had granted liberty to the petitioner to challenge the impugned assessment order before the concerned Appellate Authority. However, aggrieved over the dismissal of writ appeal, the petitioner herein has filed the Civil Appeal No.2678 of 2024 before the Hon'ble Supreme Court of India. After hearing the parties, the Hon'ble Apex Court has passed the following order:

> *"Heard the learned counsel appearing for the appellant and the learned Senior counsel appearing for the respondents.*
>
> *Leave granted.*
>
> *In the writ petition(s) filed by the appellant, there were two grounds urged. The first ground was of bar of limitation and the second was of breach of principles of natural justice. Neither the learned Single Judge nor the Division Bench dealt with those two grounds urged by the appellant. Without going into the said issues, the Division Bench has permitted the appellant to file a statutory appeal.*
>
> *As the said two contentions canvassed by the appellant go to the root of the matter have not been dealt with by the High Court, we set aside both the*

impugned orders and restore the writ petition No.2810 of 2020 to its original number to the file of learned Single Judge of the High Court of Judicature at Madras. We request the High Court to decide the Writ Petition as expeditiously as possible. All contentions are left open to be decided by the High Court.

The Appeal is, accordingly, partly allowed."

3. By referring the above order, the learned counsel for the petitioner would submit that both the Writ Court as well as the Hon'ble Division Bench of this Court had failed to consider the following aspects:

a) Limitation

b) Violation of principles of natural justice

Therefore, the Hon'ble Apex Court had set aside both the orders dated 13.09.2022 and 10.03.2023 and remitted the matter back to this Court for consideration of the above two aspects.

4. Further, he would submit that the subject matter is pertaining to the assessment year 2012-2013. As per the terms of Section 149 of the Income Tax Act, 1961, (hereinafter called as "IT Act"), the Section 148

notice should have been issued by the respondents within a period of 6 years and the assessment order should have been passed within a period of 9 months in terms of Section 153(2) of the IT Act. However, in this case, though the notice was issued on 25.03.2019, the impugned order came to be passed only on 31.12.2019 and hence, he would contend that the same is barred by limitation.

5. He would also submit that though a detailed reply was filed by the petitioner with regard to the jurisdiction, the respondents had neither considered the said reply nor provided any opportunity of personal hearing to the petitioner to present their case. Therefore, he would contend that the impugned assessment order was passed in violation of principles of natural justice and requests this Court to set aside the same.

6. In reply, the learned Senior Standing counsel appearing for the respondent would submit that in this case, admittedly the Section 148 notice was issued on 25.03.2019 and the assessment order was passed on 31.12.2019.

7. By referring Section 153(2) of the IT Act, he would submit that the assessment order can be passed within a period of 9 months from the end of the financial year, in which the Section 148 notice was issued. If it is so, since the notice was issued on 25.03.2019, the 9 months period would start from the end of financial year, i.e., 31.03.2019 and hence, the last date for passing the assessment order would be on 31.12.2019. When such being the case, he would contend that the impugned assessment order dated 31.12.2019 has been passed by the respondents well within the limitation.

8. Further, he would fairly admitted that no opportunity of personal hearing was provided to the petitioner prior to the passing of impugned order. Therefore, he requested this Court to remit the matter back to the respondent for fresh consideration.

9. Heard the learned counsel for the petitioner and the learned Senior Standing counsel for the respondents and also perused the materials available on record.

10. In the case on hand, the two issues, which have to be considered, are as follows:

(a) limitation and

(b) violation of principles of natural justice

11. As far as the limitation aspect is concerned, the provisions of Section 153(2) of the IT Act states as follows:

> ***"153. Time limit for completion of assessments, reassessments and recomputation***
>
> *(1).........*
>
> *(2)No order of assessment, reassessment or recomputation shall be made under section 147 after the expiry of nine months from the end of the financial year in which the notice under section 148 was served:"*

12. A reading of the above would show that the assessment order should have been passed within a period of 9 months from the end of the financial year, in which the notice under Section 148 of the IT Act was issued. In this case, Section 148 notice was issued on 25.03.2019, for

which, the end of financial year was on 31.03.2019. In such case, the respondents are supposed to have passed the impugned assessment order within a period of 9 months from 31.03.2019, i.e., on or before 31.12.2019 and accordingly, it was passed on 31.12.2019. Therefore, this Court is of the view that there is no substance in the submissions made by the learned counsel for the petitioner on the aspect of limitation since the impugned assessment order came to be passed well within the period of limitation.

13. As far as the 2nd issue is concerned, a perusal of the impugned assessment order would show that though the detailed replies were filed by the petitioner on 24.10.2019, 27.12.2019 and 28.12.2019, the same were not at all considered by the respondents while passing the impugned assessment order. In such case, it is apparent that the impugned order has been passed in violation of principles of natural justice and the same is not sustainable in the eyes of law. Therefore, this Court is inclined to set aside the impugned assessment order passed by the respondents.

14. Accordingly, this Court passes the following orders:

(i) The impugned assessment order dated 31.12.2019 is hereby set aside and the matter is remitted back to the Authority/respondents for fresh consideration;

(ii) The petitioner is permitted to file the additional reply to the notice dated 25.03.2019 issued by the 1st respondent under Section 148 of the IT Act and also to the notice dated 19.12.2019 issued by the 2nd respondent, if any, after centralization of jurisdiction, since this matter pertains to search and seizure under Section 153A of the IT Act, within a period of four (4) weeks from the date of receipt of copy of this order.

(iii) Upon receipt of the replies filed by the petitioner, the respondents are directed to issue a 14 days clear notice to the petitioner by fixing the date for personal hearing to the petitioner and thereafter, pass appropriate orders on merits and in accordance with law, after hearing the petitioner, as expeditiously as possible. It is left open to the petitioner to raise all the issues including the jurisdiction, if any.

15. With the above directions, this writ petition is disposed of. No costs. Consequently, the connected miscellaneous petition is also closed.

14.10.2024

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
jd/nsa

To

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Ward 3, Vellore,
Income Tax Department,
Vellore-1

2.The Deputy Commissioner of Income Tax,
Income Tax Department,
Ministry of Finance, Government of India,
Central Wing, Central Circle 2(1),
No.46, Mahatma Gandhi Road,
Nungambakkam, Chennai 600 034.

KRISHNAN RAMASAMY.J.,

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