IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.09.2024

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.Nos.4204 & 4207 of 2023
& W.M.P.Nos.4238, 4241, 4242 & 4244 of 2023

Muthukumar Sivakami

... Petitioner in both petitions

Vs.

1.The Principal Commissioner of Income Tax,
No.63, Race Course Road,
Coimbatore 641 008.

2.The Income Tax Officer, Ward 1(4),
Income Tax Office,
No.121, Adams Building,
Sixty Feet Road, Tirupur 641 602.

... Respondents in W.P.No.4204 of 2023

1.The Principal Commissioner of Income Tax,
No.63, Race Course Road,
Coimbatore 641 008.

2.The Income Tax Officer, Ward 1(4),
Income Tax Office,
No.121, Adams Building,
Sixty Feet Road, Tirupur 641 602.

3.National Faceless Assessment Centre,
Assistant Commissioner of Income Tax,
Ministry of Finance, Income Tax Department,
Delhi.

... Respondents in W.P.No.4207 of 2023

Prayer in W.P.No.4204 of 2023:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the 1st respondent in DIN & Order No:ITBA/REV/F/REV5/2020-21/1029802090(1) relating to the order passed under Section 263 of the Income Tax Act, 1961, for the Assessment Year 2012-13 in PAN: BAJPS2378P dated 15.01.2021 and quash the same.

Prayer in W.P.No.4207 of 2023:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the 3rd respondent in DIN & Order No.:ITBA/AST/S/147/2021-22/1042033993(1) relating to the order passed under Section 147 read with Section 263 read with Section 144B of the Income Tax Act, 1961 for the assessment year 2012-13 in PAN: BAJPS2378P dated 30.03.2022 and quash the same.

For Petitioner in both petitions	:	Mr.T.Vasudevan
For Respondent in both petitions	:	Dr.B.Ramaswamy, Senior Standing counsel

COMMON ORDER

These writ petitions have been filed challenging the impugned orders dated 15.01.2021 and 30.03.2022 passed by the respondents 1 and 3 respectively.

2. The learned counsel appearing for the petitioner would submit that the petitioner's father had sold a property, which is an agricultural land, to a Real-Estate Agent, due to which, the petitioner had received a sum of Rs.10,00,000/- in her bank accounts. With regard to the said deposit, a show cause notice was issued by the respondent, for which, a detailed reply was filed by the petitioner on 23.11.2018. Subsequently,

the petitioner had also filed her return of income on 29.11.2018. Thereafter, the proceedings were dropped by the 1st respondent vide impugned order dated 15.01.2021, which is the subject matter of W.P.No.4204 of 2023.

3. Further, he would submit that after the passing of aforesaid order dated 15.01.2021, once again, the notices were sent by the 3rd respondent, to the petitioner's consultant, calling for certain details. Since issuance of the said notices was not informed to the petitioner, she had failed to provide the details as sought by the 3rd respondent. Under these circumstances, the impugned assessment order dated 30.03.2022 came to be passed by the 3rd respondent, which is the subject matter of W.P.No.4207 of 2023.

4. The main grievance of the petitioner is that the 3rd respondent had sent all the notices to the E-mail ID of the Consultant of the petitioner. However, since the whereabouts of the said Consultant was not known, the petitioner was unaware of the issuance of said notices,

due to which, she had failed to file her reply. Under these circumstances, the impugned assessment order was passed by the 3rd respondent without providing any opportunity to the petitioner, which is violation of principles of natural justices. Hence, he requests this Court to pass appropriate orders to set aside both the impugned orders.

5. On the other hand, Dr.B.Ramaswamy, learned Senior Standing counsel, for the respondent would submit that the notices were sent to the E-mail ID, which was provided by the petitioner. However, after the passing of assessment order, the petitioner had intentionally changed their E-mail ID in the GST Portal. Hence, he made strong objection for setting aside the impugned orders and requests this Court to dismiss the present petitions.

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

7. In the present case, the issue is pertaining to the credit of sale proceeds of a sum of Rs.10,00,000/- in the petitioner's bank account. According to the petitioner, the property sold by her is an agricultural land and hence, she is entitled for exemption. However, the petitioner was unable to explain her case before the respondents, due to the confusions created by her Consultant. Under these circumstances, the ex-parte impugned order dated 30.03.2022 came to be passed by the 3rd respondent.

8. Therefore, considering the genuine reasons assigned by the petitioner, for non-availment of opportunities provided by the respondents, this Court feels that it would be appropriate to provide one more opportunity to the petitioner to present her case before the respondents. In such view of the matter, this Court is inclined to set aside the impugned order dated 30.03.2022, which is the subject matter of W.P.No.4207 of 2023. Accordingly, this Court passes the following order:-

(i) The impugned order dated 30.03.2022 alone is set aside and the matter is remanded to the 3rd respondent for fresh consideration

(ii) The petitioner shall file their reply/objection along with the required documents, if any, within a period of three weeks from the date of receipt of copy of this order.

(iii) On filing of such reply/objection by the petitioner, the respondent shall consider the same and issue a 14 days clear notice, by fixing the date of 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.

9. With the above directions, the writ petition, in W.P.No.4207 of 2023 is disposed of. No costs. Consequently, the connected miscellaneous petitions are also closed.

10. As far as the impugned order dated 15.01.2021 is concerned, since this Court does not find any merits in the petition in W.P.No.4204 of 2023, this Court is inclined to dismiss the same. Accordingly, the writ petition No.4204 of 2023 is dismissed. No cost. Consequently, the connected miscellaneous petitions are also closed.

23.09.2024

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

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KRISHNAN RAMASAMY.J.,

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