IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.09.2024

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.4536 of 2022
and
W.M.P.No.4672 of 2022

P.Nagarajan ... Petitioner

Vs.

The Income Tax Officer (i/c),
Ward -1(6),
Salem. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records of the respondent in DIN:20121438782 relating to the assessment order passed under Section 144 read with Section 147 of the Income Tax Act, 1961 for the assessment year 2012-13 in PAN:ABVPN7924L dated 29.09.2021 and quash the same.

For Petitioner : Mr.T.Vasudevan

For Respondent : Dr.B.Ramaswamy
Senior Standing Counsel

ORDER

The Petitioner is before this Court against the Impugned Assessment Order dated 29.09.2021 passed by the Respondent for the Assessment Year 2012-2013.

2. The case of the Petitioner is that the Petitioner retired from the Salem City Municipal Corporation in the year 2005 and thereafter, did not file regular return under Section 139 of the Income Tax Act, 1961.

3. It is submitted that the notices that preceded the Impugned Order was sent to the erstwhile address of the Petitioner and thus, the Petitioner failed to respond to the same on merits.

4. The learned counsel for the Petitioner would submit that the

only ground on which the income of Rs.23,68,000/- has been added under Section 69A of the Income Tax Act, 1961 as unexplained money as the Petitioner has failed to prove any source of cash deposit into the aforesaid account despite several opportunity being granted to the Petitioner to explain the same.

5. The learned counsel for the Petitioner would submit that the aforesaid amount is nothing but a part of the sale consideration from the sale of property of the Petitioner's mother in law and that the Petitioner has a fair case to explain.

6. Therefore, the learned counsel for the Petitioner would submit that the Petitioner may be given one chance to explain the case afresh.

7. On behalf of the Respondent, the learned Senior Standing Counsel for the Respondent would submit that there is no merits in the present Writ Petition.

8. The learned Senior Standing Counsel for the Respondent has drawn attention to Paragraph 4, 6 and 7 of the Counter. It reads as under:-

> *"4. The respondent clarifies that the impugned assessment order dated 29.09.2021 was delivered to the petitioner by post on 03.12.2021, after the respondent had ascertained the correct address. It is important to note that the petitioner's assertion of being unaware of any notices issued by the respondent does not absolve them of their responsibility to maintain accurate contact information. The onus is on the taxpayer to ensure that their address details are up to date. Therefore, any alleged lack of awareness of the assessment proceedings cannot be attributed to the respondent.*
>
> *6. It was held by the Hon'ble High Court of Madras in the matter of **Arunachalam Nadar Muthuraj** v. **Income-Tax Officer** that a Writ Petition against an assessment order under Section 69A of the Income Tax Act, 1961, for the assessment year 2017-18, was not maintainable as an alternate statutory remedy by way of appeal under Section 246A was available to the assessee. The court ruled in favour of the revenue, emphasizing the availability of an alternative remedy.*
>
> *7. In the case of **Junaitha Begum** v. **Assessing Officer**, the High Court of Madras held that a writ petition challenging an assessment orders under Section 68, read with Sections 147 and 148, of the Income Tax Act, 1961, for the assessment*

> *year 2015-16, could not be entertained as the assessee had an alternate remedy before the Commissioner (Appeals). The Court ruled in favour of the revenue, emphasizing the availability of an alternative statutory remedy."*

9. Having considered the submissions made by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondent, Court is inclined to come to the rescue of the petitioner by quashing the impugned order and remitting the case back to the respondent to pass a fresh order on merits and in accordance with law as expeditiously as possible preferably within a period of six months from the date of receipt of a copy of this order.

10. It is made clear that the petitioner shall cooperate with the respondent in the remand proceedings. In case, the petitioner fails to cooperate with the Income Tax Department, the Department is at liberty to proceed against the petitioner on merits and in accordance with law based on the available materials.

11. This writ petition stands allowed. No costs. Consequently, the connected writ miscellaneous petition is closed.

02.09.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No
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To

The Income Tax Officer (i/c),
Ward -1(6),
Salem.

C.SARAVANAN, J.

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and
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